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BY THE AMERICAN BAR ASSOCIATION

CONTENTS

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Letters as to other business relating to the JOURNAL should be addressed to the office of publication; those as to the Bureau of Comparative Law to Robert P. Shick, Franklin Bank Building, Philadelphia, Pa.; and those as to the general plan and literary contents of the JOURNAL to the Chairman of the Committee on Publications, Carroll T. Bond, Baltimore, Md.

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The American Bar Association (A Legal Fraternity)

President, Elihu Root, New York City.
Secretary, George Whitelock, Baltimore, Md.
Treasurer, Frederick E. Wadhams, Albany, N. Y.
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NONE.

GEORGE WHITELOCK, *Secretary*,
1416 Munsey Building, Baltimore, Md.

Sworn to and subscribed before me this 10th, day of March, 1916.

[SEAL] HARRY E. POHLMANN, *Notary Public.*
(My commission expires May 1st, 1916.)

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The American Bar Association Journal

VOL. II APRIL, 1916 No. 2

I

SPECIAL ANNOUNCEMENTS.

ANNUAL MEETING.

The annual meeting of the American Bar Association will be held at **Chicago, Ill.**, on Wednesday, Thursday and Friday, August 30, 31, and September 1, 1916.

Headquarters will be at the Congress Hotel, 504 S. Michigan Boulevard.

The offices of the Secretary and Treasurer will be located in the Elizabethan Room (ground floor), Congress Hotel. The offices will open for registration of members and delegates, and for sale of dinner tickets on Tuesday morning, August 29, at 10 o'clock.

The business sessions of the Association will be held and the formal addresses before it will be delivered in the Gold Room, Congress Hotel.

FIRST SESSION: WEDNESDAY, AUGUST 30, 10 A. M.

Addresses of welcome.

Elihu Root, of New York, President of the Association, will deliver the President's address.

SECOND SESSION: WEDNESDAY, AUGUST 30, 8 P. M.

Lindley M. Garrison, of New Jersey, former Secretary of War, will deliver an address.

RECEPTION.

A reception will be given by the Illinois State Bar Association and the Chicago Bar Association to the President and members and guests of the American Bar Association and ladies accom-

panying them, on Wednesday, August 30, at 9.30 P. M., in the Art Institute, Michigan Boulevard and Adams Street.

THIRD SESSION: THURSDAY, AUGUST 31, 10 A. M.

The reports of standing and special committees will be presented and discussed. They will be printed in the July number of THE AMERICAN BAR ASSOCIATION JOURNAL.

SOUTH SHORE COUNTRY CLUB.

On Thursday, August 31, 2 P. M., the members and guests and ladies accompanying them will be taken by automobile through the Chicago Park System to the South Shore Country Club, where afternoon tea will be served. They will leave Congress Hotel at 2 P. M. and return about 6.30 P. M.

FOURTH SESSION: THURSDAY, AUGUST 31, 8 P. M.

William E. Borah, of Idaho, United States Senator, will deliver an address, "Lawyers and the Public."

FIFTH SESSION: FRIDAY, SEPTEMBER 1, 10 A. M.

Frank J. Goodnow, of Maryland, President of Johns Hopkins University, will deliver an address, "Administrative Discretion and Private Rights."

Reports of committees not previously disposed of will be presented and discussed.

SIXTH SESSION: FRIDAY, SEPTEMBER 1, 2.30 P. M.

Unfinished business.

ANNUAL DINNER.

The annual dinner of the Association will be given in the Gold Room of the Congress Hotel, on Friday, September 1, 7 P. M.

Elihu Root, of New York, will preside.

The Illinois and Chicago Bar Associations invite the ladies who accompany members of the Association to dine at the same time in the Florentine Room of the Congress Hotel.

COMMITTEES, AFFILIATED BODIES, ETC.

SPECIAL CONFERENCE.

It is proposed to hold a special conference of representatives of the American Bar Association and delegates from the various State and Local Bar Associations in the United States, to consider what, if any, steps may be expediently taken to bring about closer relationship, official or otherwise, between the American Bar Association and such other Associations. The conference will convene in the Green Room (mezzanine floor), Congress Hotel, on Monday, August 28, at 10 o'clock A. M.

The Executive Committee of the Association will meet on Tuesday, August 29, 9 P. M., in the English Room (mezzanine floor, Lake front), Congress Hotel.

The General Council of the Association will meet in the Green Room (mezzanine floor), Congress Hotel.

The first meeting of the Council will be held on Wednesday, August 30, 9 A. M.

The National Conference of Commissioners on Uniform State Laws will convene on Wednesday, August 23, 2 P. M., in the Florentine Room (first floor), Congress Hotel.

The sessions of the Conference will continue on Thursday, Friday, Saturday, Monday and Tuesday, August 24, 25, 26, 28 and 29.

The Executive Committee of the Conference will meet on Wednesday, August 23, 10 A. M., in the Oak Room (mezzanine floor, Lake front), Congress Hotel.

The Judicial Section will hold its session on Wednesday, August 30, 2 P. M., in the Florentine Room (first floor), Congress Hotel.

There will be an informal dinner for all members of the Section, the officers, members of the Executive Committee, and former presidents of the American Bar Association, on Tuesday evening, August 29, 1916, at 7 o'clock, in the Florentine Room, Congress Hotel.

The Comparative Law Bureau will hold its session on Wednesday, August 30, 2 P. M., in the Oak Room (mezzanine floor, Lake front), Congress Hotel.

The Section of Patent, Trade-Mark and Copyright Law will meet on Tuesday, August 29, 3.30 P. M., in the Oak Room (mezzanine floor, Lake front), Congress Hotel.

The Section of Legal Education will hold its sessions in the Green Room (mezzanine floor), Congress Hotel. There will be two sessions of the Section on Tuesday, August 29, 3 P. M. and 8 P. M. A third session will be held on Wednesday, August 30, 3.30 P. M.

The American Institute of Criminal Law and Criminology will convene on Tuesday, August 29, 10 A. M., in the English Room, Congress Hotel.

There will be three sessions of the Institute on Tuesday, 10 A. M., 2 P. M. and 8 P. M.

The Section of American Society of Military Law will meet Wednesday, August 30, 2.30 P. M.

NOTE.—The Association of American Law Schools, whose regular annual meeting will occur in Chicago in December, 1916, will cooperate with the Section of Legal Education of the American Bar Association in its sessions on August 29 and 30.

CHRONOLOGICAL RÉSUMÉ.

AUGUST-SEPTEMBER, 1916.

WEDNESDAY, 23D.

10.00 A. M. Executive Committee of the National Conference of Commissioners on Uniform State Laws.

WEDNESDAY, 23D, TO TUESDAY, 29TH, BOTH INCLUSIVE.

National Conference of Commissioners on Uniform State Laws.

MONDAY, 28TH.

10.00 A. M. Special conference of representatives of American Bar Association and delegates from State and Local Bar Associations.

TUESDAY, 29TH.

10.00 A. M. American Institute of Criminal Law and Criminology.
2.00 P. M. American Institute of Criminal Law and Criminology.
3.00 P. M. Section of Legal Education. (Session of State Bar Examiners and Law School Teachers.)
3.30 P. M. Section of Patent, Trade-Mark and Copyright Law.
7.00 P. M. Informal dinner, Judicial Section, Congress Hotel.
8.00 P. M. American Institute of Criminal Law and Criminology.
8.00 P. M. Section of Legal Education.
9.00 P. M. Executive Committee of the Association.

WEDNESDAY, 30TH.

9.00 A. M. General Council of the Association.
10.00 A. M. First session American Bar Association.
Addresses of welcome.
President's address, Elihu Root.
2.00 P. M. Judicial Section.
2.00 P. M. Comparative Law Bureau.
2.30 P. M. American Institute of Criminal Law and Criminology (Section of American Society of Military Law).
3.30 P. M. Section of Legal Education.
8.00 P. M. Second session American Bar Association. Address, Lindley M. Garrison.
9.30 P. M. Reception to members and guests by the Illinois State Bar and Chicago Bar Associations.

THURSDAY, 31ST.

10.00 A. M. Third session American Bar Association. Presentation of reports of committees.
2.00 P. M. Visit to the South Shore Country Club.
8.00 P. M. Fourth session American Bar Association. Address, William E. Borah.

FRIDAY, SEPTEMBER 1ST.

10.00 A. M. Fifth session American Bar Association. Address, Frank J. Goodnow.
Unfinished business.
2.30 P. M. Sixth session American Bar Association.
Unfinished business.
7.00 P. M. Annual dinner American Bar Association.

HOTEL RESERVATIONS.

Frederick A. Brown, 1518 Otis Building, Chicago, Ill., has kindly consented to take charge of the reservations for members and delegates. In writing to Mr. Brown, please state preference of hotels, time of arrival, period for which rooms are desired, whether with or without bath, and how many persons will occupy each room.

A list of available hotels, also diagram showing location of hotels, will be found on supplementary pages v and vi, at the back of this JOURNAL.

SPECIAL NOTICE TO CHAIRMEN OF COMMITTEES.

All printed reports of committees of the American Bar Association for presentation at the annual meeting will be published in the July number of the JOURNAL, and such reports will *not* be printed and distributed to members in separate pamphlet form. *Chairmen of committees are requested to bear this notice in mind,* and to send to the Secretary reports of their respective committees in final form not later than June 15, 1916.

The following rooms at the Congress Hotel are available for purposes of Committee meetings and will be assigned on application of Chairmen to the Secretary, viz.: A18, 20, 22, 24, 26, 28, A6, A8, and Elizabethan Balcony (all on mezzanine floor).

GEORGE WHITELOCK, *Secretary,*
1416 Munsey Bldg., Baltimore, Md.

II.

GENERAL ANNOUNCEMENTS.

REQUEST TO MEMBERS.

Members of the Association are requested to advise the Secretary immediately of any change in address; this will insure delivery of all mail matter.

REQUEST TO VICE-PRESIDENTS.

Vice-Presidents are requested to notify the Secretary promptly of the death of any member of the Association from their respective states; the Secretary has no other source of information, except the Postoffice Department, and desires for the sake of absolute accuracy to get official information.

BINDING THE JOURNAL.

The Secretary has received a number of communications from members asking whether or not provision will be made to bind THE AMERICAN BAR ASSOCIATION JOURNAL in uniform binding. He is informed by The Lord Baltimore Press that this can be done at a cost of $1.50 per volume. In color and style the binding will be similar to that of the Annual Reports. Members desiring to have the four numbers of the 1915 JOURNAL bound in one volume, will please communicate directly with The Lord Baltimore Press, Greenmount Avenue and Oliver Street, Baltimore, Md.

EXECUTIVE MEETING.

A special meeting of the Executive Committee was held at the New Willard Hotel in Washington on Saturday, April 8, 1916. A number of amendments to the Constitution were considered.

ALEXANDER P. HUMPHREY.

Alexander P. Humphrey, of Louisville, President of the Kentucky State Bar Association, who, as announced in the January JOURNAL, had expected to deliver an address at the next annual meeting, has been obliged to withdraw from the program, owing to prospective absence from the country.

SENATE BILL NO. 3055.

The legislative bill which has been heretofore introduced in Congress to make political patronage of the clerkships of the federal courts by transferring from the judges to the Executive the power to appoint the clerks of those courts is again pending in the Senate of the United States. The members of the Executive Committee, while not feeling at liberty to act in behalf of the Association, have all united in authorizing an expression of their personal protest against this measure to the Judiciary Committee of the Senate.

ANNUAL DINNER OF MONTREAL BAR.

The annual dinner of the Montreal Bar was held at the Ritz-Carlton Hotel in Montreal on March 4, 1916. A. T. Atwater, K. C., the Bâtonnier of the Montreal Bar, presided at the dinner.

The Dominion of Canada was represented by Honorable Charles J. Dougherty, Minister of Justice, and by Honorable T. C. Casgrain, Postmaster General. Honorable Charles S. Whitman, the Governor of the State of New York, attended the dinner representing the American Bar Association, and Frederick E. Wadhams represented the New York State Bar Association.

Mr. Atwater entertained the guests at luncheon at the Mount Royal Club. The function was attended by a large number of the judiciary and leading members of the Bar of Montreal.

SIMPLIFICATION OF PRACTICE IN CALIFORNIA.

The special committee of the California Bar Association, R. S. Gray, of San Francisco, Chairman, appointed to consider and report upon the advisability of having purely procedural matters prescribed by rules of court rather than by legislative enactment, asks that it be given the benefit of comments, suggestions and expressions of views by members of the Bench and Bar. The report of the committee must be made to the convention in August next.

(*See January, 1916, issue of the* JOURNAL, *page 14.*)

EDGAR H. FARRAR.

Edgar H. Farrar, of New Orleans, La., a former President of the Association, and now Chairman of the Committee on Grievances, was stricken with paralysis at his home on February

4, 1916. According to latest advices Mr. Farrar's condition is improving.

BOOKS RECEIVED.

Acknowledgment is made of the receipt by the Secretary of the following books:

Library of Congress, Report for 1915.

Proceedings of the Bar Association of Tennessee, 1915.

Proceedings of the Sixth Annual Convention of the California Bar Association, 1915.

Report of the Sixteenth Annual Meeting of the South Dakota Bar Association, 1915.

Proceedings of the West Virginia Bar Association, 1915.

Report of the State Librarian, State of Connecticut.

Federal Income Tax (Craven and Everett).

MEETINGS OF STATE BAR ASSOCIATIONS.

THE LOUISIANA BAR ASSOCIATION will meet at Opelousas, May 5 and 6, 1916.

THE MISSISSIPPI STATE BAR ASSOCIATION will hold its eleventh annual meeting at Laurel on Tuesday, May 9, 1916.

THE BAR ASSOCIATION OF ARKANSAS will hold its next meeting on May 30, 31, 1916, at Little Rock.

THE BAR ASSOCIATION OF HAWAII will hold its annual meeting on May 31, 1916. This Association holds regular meetings on the last Wednesday of August, November and February of each year.

THE GEORGIA BAR ASSOCIATION will hold its thirty-third annual meeting at Tybee Island, June 1, 2 and 3, 1916.

THE ILLINOIS STATE BAR ASSOCIATION will hold its next annual meeting at the Hotel La Salle, Chicago, June 2, 3, 1916.

THE FLORIDA STATE BAR ASSOCIATION will meet at Atlantic Beach, June 16 and 17, 1916.

THE NEW JERSEY STATE BAR ASSOCIATION meeting will be held this year at Atlantic City, N. J., on June 16 and 17.

THE IOWA STATE BAR ASSOCIATION will hold its twenty-second annual meeting at Dubuque, June 29, 30, 1916; A. M. Hobson, West Union, is President, and H. C. Horack, Iowa City, Secretary.

THE MARYLAND STATE BAR ASSOCIATION will meet at Deer Park, June 29, 30, July 1, 1916.

THE NORTH CAROLINA BAR ASSOCIATION will hold its next meeting at Wrightsville Beach, June 27, 28 and 29, 1916.

THE PENNSYLVANIA BAR ASSOCIATION will meet at Bedford Springs on Tuesday, Wednesday and Thursday, June 27, 28 and 29. Roscoe Pound, of the Law School of Harvard University, will deliver the annual address. President George B. Gordon, of Pittsburgh, will preside.

THE STATE BAR ASSOCIATION OF WISCONSIN will meet at Oshkosh June 28, 29 and 30, 1916. Simeon E. Baldwin, of Connecticut, will deliver the annual address. M. B. Rosenberry, Supreme Court Justice of Wisconsin, will also deliver an address.

THE SOUTH CAROLINA BAR ASSOCIATION meeting will be held at Charleston, S. C., in June, 1916.

THE MICHIGAN STATE BAR ASSOCIATION will hold its annual meeting at Battle Creek, June 30 and July 1, 1916.

THE BAR ASSOCIATION OF THE STATE OF NEW HAMPSHIRE will hold its meeting at Hotel Wentworth, New Castle, June 30 and July 1, 1916. Albert R. Savage, Chief Justice of the Supreme Court of Maine, will deliver the annual address.

THE KENTUCKY STATE BAR ASSOCIATION will hold its meeting in the City of Louisville on July 6 and 7, 1916.

THE VIRGINIA STATE BAR ASSOCIATION will meet at the Chamberlain Hotel, Old Point, July 11, 12 and 13, 1916.

THE BAR ASSOCIATION OF THE STATE OF INDIANA will meet July 12 and 13, 1916, at Lafayette.

THE ALABAMA STATE BAR ASSOCIATION will meet at Decatur, July 14 and 15, 1916.

THE WASHINGTON STATE BAR ASSOCIATION will meet July 27, 28, 29, 1916. The place will be determined later.

THE MONTANA BAR ASSOCIATION will meet at Missoula the latter part of July or the first part of August, 1916.

THE BAR ASSOCIATION OF NORTH DAKOTA will meet at Devil's Lake in the month of August, 1916.

III.

CONTRIBUTIONS OF THE BUREAU OF COMPARATIVE LAW.

A. INTERNATIONAL PRIVATE LAW.

Naturalization.

In view of the present conceptions of racial divisions, Syrians, it is held in Dow *vs.* United States, 226 Federal Reporter 145, come under the Naturalization Act of 1907 as "white persons."

The Supreme Court of the United States, in Mackenzie *vs.* Hare, 239 U. S. 299, has fully sustained the right of Congress, in the same act, to provide that a woman marrying a foreigner takes his nationality. In this case the woman, who lived in California, would have been entitled to vote, if she retained her native allegiance, and made the point that she had been deprived of her vote and of her citizenship without her consent. Consenting to the marriage was held to be consenting to its legal consequences.

The British Nationality and Status of Aliens Act, which went into effect on January 1, 1915, subject to local ratifications, has a similar provision, with a reservation under which, if the husband should lose his British citizenship, the wife may make a declaration that she desires to retain hers, and thereupon shall retain it.

This act was ratified by Newfoundland in June, 1915.

The Nicaraguan Concordat.

The Nicaraguan Mixed Claims Commission, which passed out of existence in 1915, had before it a claim of the (Roman Catholic) Bishop of Nicaragua for damages for a violation by the state of Nicaragua of a *concordat* between it and the Pope of Rome, made in 1861. Was the *concordat* to be regarded as an international treaty? Or was it a mere contractual arrangement between the parties which ceases to bind either if the other repudiates its obligation? This last question was unanimously answered in the affirmative, and damages were refused, except to the extent of allowing the bishop's salary accrued before the repudiation.[1]

[1] Am. Journal of Int. Law, IX, 869.

Seamen's Act.

On November 14, 1915, the Seamen's Act went into effect as to vessels of American registry.

It follows in general, so far as it relates to the safety of life, the recommendations of the International Conference on Safety of Life at Sea, which met at London in 1914.

Seamen on our vessels are given the right to demand at every port where cargo is taken on or off, half the wages which they may then have earned. For seamen arriving here on foreign vessels a similar right was created after March 4, 1916, and—where existing treaties provide otherwise—upon their abrogation, which the President is "directed" to denounce as soon as may be permitted by their terms.

It would seem questionable whether this last provision was within the powers of Congress.

The Validity of Foreign Transactions.

A valuable contribution to the literature of international private law is made by the treatise of Señor Alejandro Alvarez, a Chilian publicist, and a member of The Hague Tribunal, on the "Great European War," published in Paris.[1] He maintains that it is no longer permissible for one nation to refuse to recognize in its territory the effects of a law of another, or not to accept the validity of contracts made in another. He regards it as no longer a matter of courtesy, but of international obligation, founded on the new principle of the solidarity of nations.

Changes Wrought by the War.

During the past year or two, the rules of international private law heretofore recognized in time of war have, in matter of practice, at least, been seriously affected. Señor Alvarez, in the work above named,[2] has summarized the principles governing the legislation and jurisprudence, in these respects, of France and Great Britain as follows:

1. No title by prescription can be acquired against a soldier in the field, nor can he be held to any juridical obligation.

[1] La Grande Guerre Européenne, etc., Paris, 1915.
[2] Page 22.

2. Banks have been given temporary privileges to keep them from insolvency.

3. Individual citizens have been partly released from their contractual obligations, and moratoriums have been created for their benefit.

4. The time for exercising certain rights has been enlarged.

5. Any pecuniary aid to subjects of an enemy or trade with any residents in his territory is forbidden. England has made it high treason to subscribe to loans to enemy governments.

6. The benefit of all these provisions extends to citizens of allies or neutrals.

Sequestration of property and debts of enemy's subjects or residents in an enemy's country, during the war, is ordered. The government takes possession and in France 2 per cent interest is allowed on the property seized. Great Britain allows her subjects to use processes which are the subject of foreign patents issued by an enemy, on paying license fees which, on the return of peace, may be claimed by the patentee.

The Extent of the Fourth Hague Convention of 1907.

The Hague Convention of 1907, "as to the Laws and Customs of War on Land," provides in Article 23, Chapter I, entitled "Means of Injuring the Enemy, Sieges and Bombardments," that it is expressly forbidden to declare extinguished, suspended, or not the subject of judicial cognizance, the rights and actions of subjects of an enemy.

These general words would seem, however, to be controlled by the declared purpose of the convention and of this chapter, so as to affect only acts of a military commander. S. E. B.

B. EDITORIAL MISCELLANY.

How May Lawyers of One Country be Most Easily and Effectively Made Acquainted with the Laws of Another Country.

The typical attitude of mind of the average lawyer is, perhaps, that of an eminent jurist, to whom this question was put, and his answer was, "What for, the Legislator? Yes, to improve the laws of his country, ... 'change' is not synonymous with 'improvement' . . . . but why the lawyer?"

A message from war-torn Germany, in the throes of the greatest war the world has even seen, sounds, however, the true note, and represents the true point of view in respect to this topic.

In the number of the *Review of Comparative Jurisprudence and Political Economy,* for the quarter ending in June, published in Berlin in July, 1915, is an article by Dr. Hans Wehberg, of Düsseldorf. Reviewing the work of the International Society of Comparative Jurisprudence and Political Economy, of Berlin, and particularly its 20th anniversary in 1914, he says:

"The knowledge of foreign laws is vitally necessary for a national jurisprudence, and, upon calm reflection, it will appear that every isolation in this domain works harm only to the particular state. It is a general conviction that a state, in the development of modern national laws, must make use of the experience, not only of its own, but also of foreign peoples. This has been recognized particularly in the recent German efforts at codification. It is not a question whether a new institution has been borrowed from the foreign law or from the domestic law, but it is a question only, whether this innovation may be made useful to the particular people, and will afford an enrichment of its jurisprudence, or should one refuse to accept a principle, whose introduction would be of immeasurable blessing to his own people, because it has grown up in the territory of a nation at the time not particularly friendly in a political sense. Since the economical rivalry of nations has become stronger, the national economical life requires the best possible law. For this furnishes for trade and commerce the only sure foundation for competitive gain, and he who would strengthen and protect his own nation in its economical struggles must also seek to improve his national law, by the introduction of meritorious principles of the foreign law. It would end only in great self-deception and self-harm for the nation if it would not imitate the best methods of other peoples."

"The flood of development cannot be diverted into a new course. It has become a world-wide economical struggle, and as such, requires a world-wide law. The development of mankind is a natural progress, that we can, it is true, influence, but in the main cannot change at all. The advances in technical matters, which bind lands and peoples to one another, and bring all states intellectually and economically nearer to one another, will become even greater after the war, and trade and commerce will more than ever strive for an uniform law."

"More than ever has this war brought to the hearts of governments and peoples a hope for the methods of peaceful settlement of disputes, and a desire to develop these methods and to

create norms of law of even larger comprehension for the relations between states. It is therefore a question of using every human effort to prevent for the longest possible time the return of bloody conflicts between states. For the real interests of states tend more and more to the cooperation of governments."

"If it be recognized that the real point of view is that an international law is a vital necessity to the life of a state, then it follows as a natural consequence, that everything possible should be done to extend its development. An ideal international law, as we must strive to make it, is only possible when international jurisprudence does not pursue the Utopia of a German international law, but seeks to set up simplified norms and uniform rules for construction, through the close cooperation with the learned of all other lands. . . . . The nations must work upon one another in the way of instruction, but not through bitter and harsh words of partisanship, whenever it becomes a question of labor among savants. . . . . The problems are great questions of peoples and mankind. The problems are earnest and hard, as yet enveloped in many shadows. Just as in any scientific contention, earnestly and honorably maintained, there should be no place for harsh words of offensive criticism. The impoliteness of offensive comments upon a scientific opponent damages only the struggle for the common large purpose, viz.—the firm belief of all peoples and states that the only firm and sure foundation builds for peace upon earth."

"We Germans would be wrong if we were to consider our juristical abilities superior to those of all other peoples, and therefore entertain the opinion that not we, but they, could obtain any advantage from the common labor. . . . . The truth is quite the contrary." A glowing tribute is paid to the French Professor Renault, to Asser, and others from Francé, Belgium and other smaller states, in the field of private international law and at The Hague Tribunal and Conference there. "Each nation has its own peculiar virtues, and especially is this true in relation to juristical methods, and it is useful to learn to know these. . . . ."

"We must be international, we must work together in an international way, so that the national values may not, in any wise, be lost. Therefore it remains now, as before, a noble aim to work together with the experts of all lands in confidence of the possibility of the ever stronger unification of law."

The acquaintance with foreign laws for the purposes of general culture will not be discussed here.

The acquaintance with foreign law, however,

I. For the purposes of comparative law or jurisprudence, and the improvement of the national or domestic law thereby attainable, viewing comparative law as a practical science, and,

II. On any particular point as to which a practising lawyer needs to advise his client or in litigated matters to advise the court, presents the real questions, I take it, that will be of interest to this body.

For, the very assembling of these delegates in a Pan-American Scientific Congress connotes Pan-American questions of law, as a science involving domestic and international human relations, political, economical, social and otherwise, that require rules of conduct for the governance of such relations.

The solution of these problems, growing in importance every day and more difficult of solution, requires an approach thereto in the spirit or attitude of mind just defined in the words of Dr. Wehberg. The immediate work is educational, the quickening of interest in the study of comparative law on our American continents and the wide diffusion of the knowledge of these laws.

The means to this end are at hand and we have the benefit of the experience of other nations in this field. These agencies need to be more fully developed in our own country, similar agencies created in countries now lacking them, and a proper cooperation between these agencies in an international way brought about.

I. COMPARATIVE LAW BUREAUS OR SOCIETIES.

1. These should be established, their membership increased, funds supplied for their educational work, either from governmental sources or private endowments, communications between such societies increased and a general spirit of cooperation between those "learned in the law" in all countries encouraged.

With ampler funds at their disposal, and with governmental or quasi-official support, these societies would be enabled to—

(a) Issue publications of foreign laws in handy form, both in the original language and translations, and likewise increase the scope of utility of their periodicals.

(b) Subsidize, or otherwise aid in having published, original elementary books on foreign law, *i. e.*, books in the local language giving an outline of the foreign law in comparison with the local law. Local lawyers cannot readily grasp foreign law by the mere translation of foreign books upon the foreign law. The use of the local language alone will not give this insight. It is necessary to present the foreign law to the local lawyer in a background

of his own law so that he may readily understand the foreign equivalents of substantive law and procedure. Particularly is this true where the judicial system of the foreign country operates upon an entirely different basis; has different powers and functions. Such books, as well as translations, in order to be readily intelligible to the local lawyer, must be prepared by persons not only qualified in the foreign language, but also in the foreign constitutional and legal structures as a whole.

(c) Either alone or in cooperation with law schools, universities or institutions of the character, for instance, of the Carnegie Endowment, to have courses given on foreign law, both by resident lawyers, specializing therein, and by persons specially invited from foreign countries to deliver courses of lectures upon the law and legal systems of those countries.

Foreign lawyers acquainted with the local language and legal customs, or local lawyers acquainted with the foreign law and legal customs, are equally in a position to give an intelligent grasp to a large number of hearers. Opportunity should be given by questions propounded to the lecturer to clear up doubtful points. Indeed, a course of lectures might very well be accompanied also by a kind of seminar wherein a running commentary can be interspersed with discussion, conversation and explanation generally between lecturer and audience. Worthy mention here is a course of lectures on Anglo-American law, delivered by Arthur K. Kuhn, Esq., an associate editor on the staff of the Comparative Law Bureau of the American Bar Association, at the University of Zurich in 1914, in which he was able to put in practice some of the ideas above outlined with good effect. The lectures were attended not only by members of the Bar, but by important members of the banking and business community engaged in transaction with England, the British Colonies and the United States.

(d) To have salaried officials or clerks, and to maintain permanent headquarters, with facilities for the collection of books, and the establishment of a library for this special field.

2. There should be greater cooperation between organizations working along allied lines in this field. In the United States of America, for instance, and with a special reference to Pan-American affairs, there is a certain duplication of work as between

various government bureaus, the Pan-American Union, the Bureau of Comparative Law and the Carnegie Endowment for International Conciliation. Duplication of work should be avoided and, on the other hand, greater diffusion of the result of work done should be obtained. As far as Pan-America is concerned, there is a possibility that a special bureau may be created in the Pan-American Union, following the recommendation adopted at the recent Pan-American Financial Congress, for promoting the work of uniformity of commercial laws. This would naturally necessitate a compilation of present-day laws prior to any attempt at uniformization, to show the existing divergencies.

3. The first step in the development of comparative law as a practical science was in 1869, when some members of the Bar of Paris organized the Societé de Législation Comparée, having for its object "the study of the laws of different countries and the ascertainment of the means of harmonizing the divers subjects treated of legislation." While activity was suspended partially during the war with Germany, soon afterwards the practical benefits achieved became so apparent that the membership gradually embraced the most learned legal scholars of France and many distinguished foreign jurists. The assistance rendered to Parliament, courts and teachers of law was extended to the government itself through the Minister of Justice and led to the beginning of translations of all foreign fundamental laws under the direction of the Council of State. On December 4, 1873, the government decreed the society to be an establishment of public utility. It has accomplished much, and includes among its members the foremost men of the French Bar, besides hundreds of individuals, associations and libraries in all parts of the world. It has also received a subvention from Mr. Carnegie. Its bulletins are published monthly and contain comments of leading decisions, important legislation, book reviews and articles on special subjects comparatively from the historical and modern standpoints. It holds conferences once a month, at which various features of comparative law study are discussed and specific legislation advocated or criticised. It has grown into a great and powerful body, with a library of some forty thousand volumes.

This pioneer in organized effort has not been without influence in other countries.

In 1895 the Society of Comparative Legislation was founded in London and at once received general recognition from the English Bar. It publishes an annual journal on the lines of the bulletin of the French society and is considered an invaluable aid to Parliament and to judges and barristers throughout the United Kingdom.

In 1905 the Berlin Society for the Study of Comparative Jurisprudence and Political Economy (Vereinigung für vergleichende Rechtswissenschaft und Volkswirtschaftslehre) began issuing supplemental "Blätter" devoted to the bibliography of current legal literature and discussions of new legislation in foreign countries prepared specially by the "Internationalen Institut für Social-Bibliographie." This society itself celebrated its twentieth anniversary in 1914.

In January, 1908, the Institut de Droit Comparée was organized in Brussels and has since published several "revues" of high merit. Leading judges and lawyers are engaged in the work, which promises to be of much material assistance to Belgian jurisprudence and legislation.

In December, 1908, a distinguished group of Spanish lawyers at Madrid founded the "Instituto Ibero-Americano de Derecho Positivo Comparado" and took over the *Revista de Legislacion,* an old and well-known journal, as a means of assisting the work of the new society.

All of these publications contain large sections devoted to intelligent, critical and instructive commentaries on the federal and state laws of this country.

In America the subject received no organized recognition until the Pennsylvania State Bar Association, at its annual meeting in 1905, appointed a committee to consider it. That committee perceived and so reported that any adequate project would be too great for one state body and that the matter should be brought to the attention of the American Bar Association. As a result of this suggestion, that association, having appointed a committee to consider the best method of accomplishing the desired end, and acting upon its report at the annual meeting in August, 1907, authorized the organization of the Comparative Law Bureau. This was done and its work has become known generally to the lawyers of the country and to a great extent abroad through the

publication of its first annual bulletin of July 1, 1908, which, while necessarily somewhat fragmentary as an initial issue, presented a fair review of legislation and bibliography of each of the important countries of the world. This bureau has now issued eight bulletins, the last appearing as the April number of THE AMERICAN BAR ASSOCIATION JOURNAL. Its work is the best spokesman for itself.

4. The gain to national or domestic law in the better securing the real expression of the people's will by proper statutory enactment through a study of comparative law or jurisprudence has already become well recognized in our country.

We need but refer *inter alia* to—

(a) The work of the various legislative reference bureaus connected with the majority of our state governments. The New York State Library in its *Yearbook of Legislation* and the Legislative Reference Department of the State Library in Wisconsin were the pioneers in this field, and have done most excellent work in the way of accumulating basic material needful to a student of comparative law. Their work has borne substantial fruit in the way of influence for good upon the legislation in those states.

(b) The Legislative Drafting Department of the Columbia University of New York City, of which Prof. Thomas I. Parkinson is the director. This department of Columbia University has become a truly scientific, non-partisan legislative research bureau, and is doing most excellent work to correct the great evils of hasty, ill-advised or unconstitutional legislation in New York State and elsewhere, where its counsel and advice is being invoked.

II. MAKING AVAILABLE KNOWLEDGE OF PARTICULAR POINTS OF FOREIGN LAW.

1. On the second branch of the topic, viz.: the making available knowledge of particular points in foreign law, the following ideas in addition to all of the foregoing suggest themselves:

A duty devolves upon librarians. Collections of foreign law must be developed. With special reference to our own country, law libraries should take definite steps to systematize their work, cut down unnecessary duplications and fill up their collections. The desideratum would seem to be to have available somewhere

within the country every law book and law treatise of any kind whatsoever published anywhere in the world. On the other hand, for the vast majority of such books, one copy in the entire country would be sufficient. The law libraries at present go to needless expense in providing themselves with books which remain on their shelves for years and years without ever being consulted by anybody. Each large library should specialize either in the law of one particular country or in the laws of all countries on a particular branch, except as to the fundamental laws and standard elementary treatises which might be more frequently consulted.

2. A system of ready exchange between libraries could be built up to make available the foregoing special collections as well as complete bibliographical information made available in each library.

3. Where an immediate answer is not required, but, on the other hand, there may be time for sending abroad for consultation, either for private counsel or for use in court, official bodies should be established in each country to whom, either through official channels or direct, the different consultations may be addressed on points of law. The character of these bodies should be so high that their opinion would be accepted by all parties to the controversy and by the court. In other words, the government or other official body should guarantee the capability and impartiality of the persons to whom the consultation was addressed, as well as assure that only reasonable fees be charged. Such a system generally in vogue would avoid expense that is now often prohibitory and would, on the whole, be more satisfactory, I believe, than the present method in litigated cases, of each side consulting or importing heavily feed experts.

A plan has been adopted on the continent of Europe that is worthy of mention. A central board of lawyers versed in foreign laws undertakes to give replies to local lawyers upon the statutes and jurisprudence of foreign countries. Such a board was established some years ago in Brussels and a similar one is also to be found in Berlin. The board does not attempt to disseminate a general knowledge of the foreign law, but only to assist the local practitioner in tracing the statutory law and jurisprudence of the particular country upon specially requested topics.

A closing word of greeting to our Latin-American brethren in the law, from the Comparative Law Bureau of the American Bar Association. As the Secretary of that bureau, I cordially invite you to join us in our labors. Our Latin-American Committee, Messrs. Phanor J. Eder, Leo S. Rowe, Joseph Wheless, Robert J. Kerr, Lamar C. Quintero, Walter S. Penfield and Lucius Q. C. Lamar, are doing most excellent work, but it is necessarily limited.

We of the Northern Continent need greater enlightenment upon the laws and jurisprudence of the Central and South American continents. We American lawyers, in a Pan-American sense of the word, can learn much from one another.

The Comparative Law Bureau opens its columns to all jurists, and especially invites all Pan-American lawyers, jurists and publicists to use its Bulletin for discussion of any matters of general interest in the field of jurisprudence.

Political, social and economical forces are making for closer relations between all American governments and peoples. I need but cite the "A. B. C. Conference" at Niagara in 1914, the Pan-American Financial Congress in Washington, D. C., last May, the visits of Dr. Leo S. Rowe to South America in the interest of educational matters, and the present mission of Mr. H. E. Alexander to South America in the interest of better commercial conditions.

The American Bar Association at its annual meeting in Washington in 1914 was charmed and instructed by the most interesting and illuminating address by Dr. Naon, the Ambassador from the Argentine Republic, with its clear exposition of the idealistic principles so strongly influencing the constitutional life of the Argentine nation. We hope his address is but the beginning of such talks upon Pan-American questions of law. We all must work together internationally, through the agencies above suggested. If we do, we lawyers may look with confidence into the future, in our work of building up a great system of Pan-American law, to govern the peoples of the American continents in their international relations, conserving, however, at the same time all the values of national systems of substantive law or procedure.

R. P. S.

PHILADELPHIA, PA., December 27, 1915.

SECOND PAN-AMERICAN SCIENTIFIC CONGRESS.

The second Pan-American Scientific Congress held its sessions at Washington from December 27, 1915, to January 8, 1916. A notable gathering in many ways, it was not without interest from the standpoint of comparative law. One entire section of the congress, Section VI, was devoted to international law, public law and jurisprudence and a few papers on legal subjects were read at other sections. Among the official and non-official delegates were a great number of distinguished jurists and practicing lawyers from the Latin-American countries: many of the papers presented naturally treated their subject matter comparatively; and, in addition, outside of the formal meetings, the opportunity to exchange notes and views was extremely valuable.

Among the delegates from the Latin countries, the following, whose legal writings are well known to students of comparative law, may be mentioned: Dr. Ernesto Quesada and Dr. C. O. Bunge, of Argentina; Dr. Rodrigo Octavio, of Brazil; Dr. Julio Philippi, Dr. Alejandro Alvarez and Dr. Moises Vargas, of Chile; Dr. Rodriguez Piñeres and Dr. Francisco F. Urrutia, of Colombia; Dr. Luis Anderson, of Costa Rica; Dr. Jose Matos, of Guatemala; Dr. Victor Maurtua, of Peru.

Many prominent diplomats also attended. The members of the editorial staff of the Comparative Law Bureau who were present at the congress were the Hon. Simeon E. Baldwin, who presided over the sub-section on public law, Hon. W. W. Smithers, Dr. Edwin B. Borchard, Arthur K. Kuhn, Gordon E. Sherman, Walter Scott Penfield (secretary of the official United States delegation), Robert P. Shick and Phanor J. Eder, the last two being the delegates of the Comparative Law Bureau and Mr. Eder being also an official delegate from the Republic of Colombia.

Topics of international law (such as its codification and study, the means by which it may be made more effective, the duties and obligations of neutrals, The Hague conventions, arbitration and the peaceful settlement of international disputes, specific problems of American International Law, the Monroe Doctrine, as well as the general idea of Pan-Americanism) absorbed the greater part of the meetings of the legal section, were brought forward very conspicuously at the general sessions of the whole

congress and received copious recognition in the contemporary press notices referring to the congress.

The papers presented, some in English, some in Spanish, on more technical, and less popular, legal subjects included: "The Relation of International Law to National Law in American Countries," discussed by Dr. Alvarez, of Chile, Hon. John Bassett Moore (official delegate of Costa Rica as well as of the United States) and Prof. George G. Wilson; "Relations between the Judicial and Legislative Powers," by Dr. Rodriguez Piñeres, of Colombia; "Criminal Law and Procedure with Special Reference to the Scope and Limits of Jury Trials," by Dr. Moses A. Vieites, of Cuba; Dr. Victor M. Penaherrera, of Ecuador; Dr. Jose A. Vargas Torres, of Colombia, and Hon. Chas. F. McLean; "The Historical Evolution of Public Law," by Prof. Gordon E. Sherman; "The Relation of Public Law to International Law," by Mr. Justice Beach; "Public Law as Affecting Legal Procedure in Civil Causes," by Wm. W. Smithers; "The Effect of American Public Law on Our Written Constitution," discussed by Hon. Lucilius A. Emery and Prof. George D. Watrous; "Is there an American Public Law that can be Differentiated from that of Other Continents?" by Hon. Robert Ludlow Fowler; "The Legislative Reference Bureau," by Prof. Thos. I. Parkinson; "Presidential and Parliamentary Government on the American Continent," by Lic. Rafael Maria Angulo and Dr. Sanchez de Fuentes, both of Cuba; "Government and Responsibility," by Dr. Justino E. Jimenez de Arechaga, of Uruguay; "Judicial Organization," by Dr. Andres J. Montolio, of the Dominican Republic; "The Power of the Executive to Dictate By-laws and Regulations," by Dr. Moises A. Vargas, of Chile; "Recent Law Reforms in the United States," by Dr. Frederick N. Judson; "The Extra-Territorial Effect of Criminal Statutes," by Dr. Wm. H. Page; "The International Assimilation of Law," by Prof. John H. Wigmore; "Some Lessons from Foreign Law," by Dr. Borchard; "How May Lawyers of One Country be Most Easily and Effectively Made Acquainted with the Laws of Another Country," by Mr. Shick[1]; "A Study in Mexican Law," by Thos. W. Palmer, Jr. The opening addresses by the chairmen of the sub-Sections on Public Law and Jurisprudence, Governor Baldwin and Prof. Eugene Wambaugh, were especially noteworthy. Papers of

[1] Printed above.

interest to the lawyer in other sections of the congress included: "The Laws and Regulations of the Pan-American Countries Governing the Use of Waters," by Rome G. Brown, with the collaboration of Phanor J. Eder; "the Mining Laws of Panama," by Jil. F. Sanchez, of Panama; "The Mining Code of Chile," by Julio Foster, of Chile; "The Mining Laws of Spanish America," by Phanor J. Eder; "Mining Laws of the United States," by J. W. Thompson, of the United States Bureau of Mines; "The Indian and Latin-American Law," by Dr. Manuel Gamio, of Mexico; "Pan-American Bibliographic Union," by Sr. Carlos Silva Cruz, of the National Library of Chile, and "Uniformity of Patents," by Thos. Ewing, United States Commissioner of Patents.

At its final session, the congress outlined its recommendations in the form of comprehensive resolutions. Among the resolutions so adopted were the following of especial interest to the legal profession, in addition to a comprehensive and detailed resolution that certain specific steps be taken to increase the facilities for the study of international law and to enlarge library and reference facilities:

"XXIV. Embodies a special resolution relative to the formal inauguration, under the auspices of the congress, of the American Institute of International Law, founded in Washington, D. C., October 12, 1912, and extends to the institute a cordial welcome into the circles of scientific organizations of Pan-America, and records the sincere wish of the congress for a successful career and the achievement of the institute's highest aims, etc.

"XXV. Recommends to all educational establishments of America the *special study* of the constitutions, laws and institutions of the republics of this continent.

"XXVI. Recommends to the various universities of America that a *comparative study of judicial institutions* be undertaken; also to facilitate the knowledge and solution of American private international law problems, and to seek as far as possible uniformity of legislation and jurisprudence.

"XXVII. That all *Bar associations* of American countries be urged to exchange among themselves law books and publications affecting the legal profession, with a view to broadening and rendering closer their mutual relations.

"XXVIII. Recommends that a compilation of the *mining laws* of the American countries be made in English, Spanish and Portuguese, with a view to the reciprocal improvement of the laws of each individual country. . . . ."

In conclusion, the congress specially recommended, for execution by the present Pan-American Union or by means of any other institution in actual existence or to be established, the establishment of an *intellectual Pan-American Union* to unite the various associations of different character—technical, medical, legal, etc. —divided into sections according to groups that may be deemed convenient, such as a university section, a library section etc. . . . .

During 1915 Dr. Edwin M. Borchard, the Law Librarian of Congress, took a trip through the countries of South America as the representative of the Library of Congress. Partly by gifts from the governments of the countries visited and partly by purchase, Dr. Borchard was enabled to acquire large collections of the official gazettes, statutes, law reports, treatises and official documents of the various countries, and especially to obtain such books, etc., as will fill out the law collections of the Library of Congress in a systematic manner.

The Library of Congress has recently published a "Guide to the Law and Legal Literature of Spain," prepared under the direction of Dr. Borchard, by Thomas W. Palmer. While in South America Dr. Borchard made preliminary studies with lawyers in each country in preparation for a "Guide to the Law and Legal Literature of Latin-America," which will be published by the Library within a year.

With these two guides and the enriched collections in the Library of Congress, we shall have, at Washington, the means for a thorough study of Latin-American law.

We also call attention to the General Latin-American Bibliography, of which Mr. Eder has sent us the first installment, and we publish it in this issue under III, E.

Louis E. Levinthal, the contributor of the article on "The Land Laws of Turkey," printed in this issue, prepared a much more elaborate essay on the same subject for what is known as the "Brandeis Prize Essay Competition," and received the second prize of $50.

Heinrich Brunner.

Died at Bath Kissingen on August 11, 1915.

Brunner was born on June 21, 1840, at Wels, in Upper Austria. His studies were pursued in Vienna, Göttingen and Berlin, and

he graduated at Vienna in 1865. From 1866 to 1870 he was professor at the University of Lemberg, from 1870 to 1872 at Prague, in 1872 and 1873 at Strasburg, and since then at the University of Berlin, or for 42 years. He was rector of the university in 1896-1897. Of late years he was a member of the German Upper House.

Brunner was, without denial, the greatest of Germany's legal historians, and probably the greatest of his contemporaries in the world. He is known to the world at large as the historian only, but in his own country he was highly esteemed and respected as a modern jurist also; as such he was best known through his published lectures on private law and on commercial law, and especially through his treatise on so-called "Wertpapiere" (stocks, bonds, bills, notes, etc.).

His most important work was his Deutsche Rechtsgeschichte. He succeeded, however, in completing but two volumes, bringing the history down to the end of the Frankish period. Right up to his death he was busy rewriting the second volume thereof, and it is said that the work had progressed so far and the material collected become so full that it will be possible to publish this revised edition as a work by Brunner.

The fact that Brunner was especially familiar with the Frankish period has made his work of the greatest importance to all the nations of Europe, for the present European civilization, especially in a legal sense, rests mainly on a Frankish foundation. For this reason also he received the appreciation of historians and legal scholars of all nations, English, French, Spanish, Italian, Hollanders, Scandinavians and Americans.

Brunner was a Germanist. He believed in the rejuvenating strength of the old Germanic ideas of law, as a system of justice rather than a system of individual rights, and took great interest in, and invested a great amount of work in efforts to "socialize" the institutions of his country. But he did not belong to any school, had no fight on with the Romanists, and always managed to keep his mind wonderfully open. This was of the greatest importance for his work, as no preconceived prejudice tempted or forced him to make and defend assertions which the facts would not back up. He was full of intuition and imagination, but not of the kinds that run riot. By help of them he often "guessed" the real nature of ancient institutions, but he never

gave out these "guesses" for facts until he had verified them by a most minute concluding backwards from later institutions, the nature of which had been fully established.

Brunner took a great interest in the German Juristen Tag and for a number of years it was a foregone conclusion that Brunner should preside over its meetings. A. T.

Masuji Miyakawa.

Masuji Miyakawa, D. C. L., LL. D., who died recently, had been our editor for Japan ever since the Bulletin of the Comparative Law Bureau was first established. He was a most valuable contributor, and his articles contain a large amount of useful information. He took great interest in the bureau and its work, was always willing to assist, and his death is a distinct loss, especially to those who knew him personally. Mr. Miyakawa was the first Japanese admitted to the American Bar. He was attorney for the defense of the first case arising under the Japanese-American extradition treaty, and chief counsel for the Japanese children in their famous case against the San Francisco School Board, which had refused them admission to the schools. He carried the case to the California Supreme Court and won it.

Mr. Miyakawa was the author of two books in the English language, viz.: "Life of Japan" (1905) and "Powers of the American People" (1908), and until his death conducted as manager and chief editor the *Japan Review,* a monthly magazine published in New York.

C. SPECIAL ARTICLES.

The Land Laws of Turkey.

BY LOUIS E. LEVINTHAL, OF THE PHILADELPHIA BAR.

The law of real property is the only branch of Turkish jurisprudence that is of direct and practical concern to others than the Turks themselves. The capitulations gave extra-territorial effect to the laws of the foreign powers, granting to each foreign colony in Turkey its own courts and judges. When, however, in 1867, foreigners were given the right to own land in the Ottoman Empire, a right previously denied to them, it was expressly provided that all who availed themselves of this new privilege should

obey all Turkish regulations governing the acquisition, enjoyment, and alienation of real estate, should pay all taxes and charges levied thereon, and should be directly amenable to the Ottoman civil tribunals in all questions pertaining thereto, even though both parties to the litigation be foreigners. Whether or not the capitulations will survive the present war is problematical,[1] but it is reasonably certain that non-Turkish landowners in Turkey will remain subject to the laws and courts of the country of their residence in all matters relating to the land they own. Moreover, whatever geographical and political changes the war may effect in Turkey, it is hardly likely that the agrarian law now in force will be superseded by any other.[2]

Turkish real property law is basically canonical,[3] the product of the conception that theology and law are but phases of an indivisible unity, and the result of the belief that the Moslem lands would forever contain Moslems only. It was found in more recent times that secularization of the law was necessary, and an imperial land code was formulated.[4] This code, however, did not supplant the ancient sacred law; it simply supplemented it. As a consequence, Turkey has today two equally significant collections of rules dealing with immovable property.

In this article it is intended to outline briefly the land system in Turkey and to set forth some of the more striking features of the laws relating to landownership.

[1] On September 9, 1914, the Porte announced the abrogation of the capitulations, adding that the object was to obtain judicial, economic, and fiscal liberty of action. The abrogation met with united opposition on the part of all the Powers. The effect of the repeal of the capitulations would be to deprive all foreigners of the right of extraterritoriality in all cases. For the juridical status of aliens in Turkey prior to the war, see Philip M. Brown's "Foreigners in Turkey."

[2] When Cyprus came under the control of England, for instance, it was found desirable to continue to enforce the established Turkish land system, and this policy has met with the complete satisfaction of the people and the authorities.

[3] The sacred law of the Turks follows the Hanifite school of authority, and the book most used for reference is the Majellé, which contains 1851 articles, many of them relating to landownership. The Majellé is given in full in Young's "Corps de Droit Ottoman," Vol. VI, pp. 169-446.

[4] Young's "Corps de Droit Ottoman," Vol. VI, pp. 45-84. See also "The Ottoman Land Code," translated into English by F. Ongley.

TURKISH LAND TENURES.

Mulk.—In the early Ottoman Empire there were but two classes of lands, namely, Ushrie, or tithe lands, held by Mohammedans only, and Kharajie, or tribute lands, held originally by the vanquished Christians.[5] The ownership of both these categories of lands was absolute, unconditional and unqualified, an ownership known as Mulk, the only kind of proprietorship recognized by the sacred law of Turkey. No distinction is made by that law between immovable and movable property; both are owned as Mulk. The ownership of a plot of ground or a piece of cloth is, from the theological viewpoint, identical.

Mulk lands do not form a large proportion of the country, being comprised chiefly of some house property in the towns and some land in the immediate vicinity of villages.

Mirie.—As a development of the later conquests there arose a land tenure known as Mirie, or state domain. The title to the lands included in this tenure was in the Sultan, who distributed the bulk of them among his followers in return for military services, thus establishing an elaborate feudal system. In 1839 the feudal system was abolished and the state thus recovered title to an extensive area of territory. To regulate the distribution and enjoyment of these state lands, the Imperial Land Code of 1868 was formulated.

The tenure of Mirie is similar in many respects to the emphyteusis of the Roman law. The state reserves to itself the dominium, or paramount ownership, while the tenant, who holds under a sort of lease known as Tapu, has the undisturbed control of the land and its produce during his life. Except by permission of the government, Mirie lands, as distinguished from Mulk lands, may not be built upon or planted, and it is only with the sanction of the state that they can be transferred during the occupier's lifetime. When Mirie is left uncultivated for ten years, without lawful excuse, the tenant loses his title forever.

[5] The history of the Turkish land system is contained in Albert H. Lybyer's "The Government of the Ottoman Empire in the Time of Suleiman the Magnificent," pp. 28-32, and in Edward A. Van Dyck's "Report on Private International Law in the Ottoman Empire," U. S. 46th Cong., Special Session, Senate, Ex. Doc. 3, Serial V, 1943, and U. S. 47th Cong., 1st Session, Senate, Ex. Doc. 87, Serial V, 1989.

Vakuf.—Mulk lands dedicated by their owners to mosques and other pious and charitable uses are converted from Mulk into Vakuf, and when Mirie lands are endowed similarly, they are treated as quasi-Vakuf. The pious foundation to the use of which the Vakuf is consecrated leases the land to tenants who may alienate it and, within certain narrow limits, transmit it by inheritance. The mosque or other religious institutions retain a perpetual interest in the land, receiving annual rents from the tenants and having the right of reversion in certain contingencies.

Vakuf estates and the tenants living thereon enjoy special privileges, the chief of which is the exemption from payment of the tithe tax. The whole Vakuf system has many features in common with the employment of uses under English law. In 1867 a commission was appointed to consider the possibility of totally abolishing the Vakuf tenure, but to no purpose.

Mevat.—Land that is unutilized is called Mevat, or dead land. Usually far from human habitation, territory belonging to this category may be acquired by any person who is willing to bring it under cultivation. Until appropriated it is the property of the Crown, and when cultivated it becomes Mirie.

Metruké.—Lands set aside for the general use of the whole community or a portion thereof are known as Metruké. They consist of roads, beds of rivers, public threshing floors, and pastures assigned to villages.

ACQUISITION AND ALIENATION OF REAL PROPERTY.

Acquisition by Possession.—Possessory titles may be obtained by proving the occupation of Mirie for 10 years, or Mulk for 15 years, provided the original occupation is not admittedly wrongful. In computing time the possession of a deceased occupier and that of his heir may be tacked. The owner's minority, unsoundness of mind, or absence from the country may prevent the acquisition of a possessory title so long as the disability exists.

Testate and Intestate Succession.—Succession to Mulk, following as it does the same rules as succession to personal property, is quite extensive. The owner may devise his lands by will, and when he dies intestate his heirs are the following: (1) The male descendants, (2) the male ascendants, (3) the surviving spouse, and (4) the next of kin generally.

As Mirie lands really belong to the state, they cannot be disposed of by will. When an occupier of Mirie dies his direct heirs of the same degree take in equal shares, males and females alike. The children of a person who, but for his prior death would have been an heir, take their parent's share. On the failure of direct heirs the father and mother, or the surviving parent, succeed. Collateral heirs come next, brothers being preferred to sisters and the consanguineous being preferred to the uterine line. The descendants of brothers and sisters do not succeed to Mirie lands. The succession then passes to the surviving spouse of the decedent, and in all cases where there is a failure of direct heirs and the inheritance passes to other heirs the surviving husband or wife takes a quarter share.

Among the restrictions on the right of inheritance is the provision that the land of a Mohammedan shall not pass on his death to one not a Mohammedan, and *vice versa;* similarly, Ottomans cannot inherit the lands of non-Ottomans, and *vice versa.*

Registration of Titles.—It is provided by statutory enactment that all titles to land, Mulk or Mirie, no matter how acquired, in order to be legally valid, must be registered in the books of the Defter Khané.[6] The statute gave rise to the question whether it is possible to alter by legislation the provisions of the ancient sacred law, by which a sale of Mulk, land as well as personalty, is complete by offer and acceptance, without registration or any other formality. The Sheikh-ul-Islam declared, as he had to, that the sacred law was permanent and unchangeable. The Sultan, however, by virtue of the prerogative authorizing him to decide what suits his courts should or should not take cognizance of, directed the tribunals of law not to hear any case concerning unregistered titles of Mulk immovable property. Thus, without impeaching the doctrines of the canonical law, a reform required by the conditions of the time was inaugurated.

The requirement that land to be held in complete ownership must be registered applies not only to Mulk and Mirie lands, but also to all Mulk property that is inseparable from the land, even isolated trees. The unregistered owners are under the disadvantage of being unable to mortgage their lands or to protect

[6] Young's "Corps de Droit Ottoman," Vol. VI, pp. 90-112.

their rights against trespassers. An owner who has purported to sell without a registered transfer may repudiate the sale, and if he has parted with possession he may assert his legal right in an action against the purchaser.

INCIDENTS OF LANDOWNERSHIP.

Right of Preemption.—The Mohammedan doctrine of preemption,[7] which has its analogue in the ancient Jewish codes,[8] gives the person who owns land the right to purchase adjoining property in preference to all other would-be purchasers. Thus, if a Mulk property in a town or village has been sold, and an adjacent owner on becoming aware of the sale claims to purchase the property himself, he will be substituted for the original purchaser. The expenses of the sale and registration must be paid by the claimant in addition to the purchase price agreed upon by the original parties to the sale. Where, also, as frequently happens, one man has a building or plantation on the Mirie land of another, if the owner of the land alienates it, the owner of the building or plantation may claim the land on paying its bare value. Furthermore, if a man sells land in his village to one residing in another village, the vendor's fellow villagers who have need of the land may claim it at the agreed sale price.

Mortgage and Judgment Liens.—Any registered property can be mortgaged. The legal title is not affected by the mortgage; the land hypothecated has merely a lien upon it. If the debt and interest are not paid by the mortgagor, the mortgagee may without any special action at law cause the land to be sold in satisfaction.

A judgment creditor also has a lien on the registered property of his debtor, but land cannot be sold in execution without special leave of the court. Even a person who holds a consular judgment against an individual must obtain a writ of execution from the Ottoman courts. The only house of the debtor can never be sold upon a judgment execution, and if the debtor be a farmer a sufficient area of land to enable him to make a livelihood will be exempt.

[7] The subject of preemption is fully treated in Syed Ameer Ali's "Mohammedan Law," Vol. I, pp. 712-743.

[8] Baba Mezia, p. 108; Hoshen Mishpat, § 175.

Land Taxes.[9]—The most important of Turkish land taxes is the tithe (oscher), which actually amounts to 12.6 per cent, rather than one-tenth. It is imposed upon the produce of Mulk or Mirie lands. Though it should always be paid in kind, the money equivalent may be substituted in the case of perishable goods. Mulk lands of certain kinds are exempt from the tithe, among them being newly-grown mulberry and olive plantations.

Vergho is the name of the soil tax which every landowner must pay. It amounts to about 0.4 per cent of the value of the land and 0.5 per cent of the value of buildings erected thereon, payable annually. There is also a registration tax imposed whenever title is transferred on the books, whether as the result of a conveyance *inter vivos* or of an inheritance.

Rights of Light and Privacy.—The most important rights attaching to houses are those of light and privacy. No matter how recently a dwelling may have been built, the owner has a right to prevent the obstruction of light coming to his windows. However, if sufficient light remains to the owner for ordinary purposes of occupation from other windows of the same room, he cannot complain of the obstruction.

A houseowner has also a right to prevent his neighbor from opening a window which will overlook those parts of his dwelling customarily used by women.

PROCEDURE AND EVIDENCE IN LAND CASES.

The procedure in Ottoman courts relating to land questions is a subject that requires special attention. There are, for instance, specific provisions for trying a dispute as to whether the plaintiff or the defendant has possession of land. Both parties must produce evidence with regard to their possession, but the court does not decide that one is right and the other wrong. If both litigants produce satisfactory evidence of possession the decision is that they hold the property in common. A similar rule is in force when the fact of ownership is in controversy.

[9] See E. Saphir's article on "Zoll und Steuer im türkischen Reich," Altneuland, 1904; and I. Auerbach's "Das türkische Agrargesetz," Die Welt, 1909.

THE REFORM OF THE LAND LAWS.

In 1913 a series of provisional laws, promulgated in the absence of Parliament and put into force by executive decree, provided for a general survey and revaluation of all lands in the Empire, together with a readjustment of taxes. They also extended the right of inheritance and modernized the hypothecation of lands as security for debts.

It is questionable whether such attempts at reform can have the desired effect. They are, it is estimated, more likely to confuse the land system of Turkey, just as the existing complications in the Turkish civil, criminal and commercial courts were caused by successive attempts at modernization.[10] The truth is that a really comprehensive land code, embodying and coordinating the whole of the existing laws of real property in a single statute, would be a great achievement. But this is more than can be expected at present.

The reform that is needed and can be attained is a general and far-reaching improvement in the administration of the laws. The suppression of arbitrary action on the part of the officials and the removal of financial abuses would be of real and substantial value. A reform of methods, rather than of laws, is required for the reconstruction of the Turkish agrarian system.

Adverse Possession—Prescription.[1]

BY AXEL TEISEN.

What is possession? Is it fact or law? Is it simply a situation which may lead to rights? or is it a right in itself?

Nihil commune habet proprietas cum possessione; Ulpian, fr. 12, sec. 1, Dig. 1-2. Possessionem rem facti, non juris esse;

[10] Anton Bertram's "The Legal System of Turkey," Law Quarterly Review, 1909; Sir Roland K. Wilson's "Modern Ottoman Law," Journal of Comparative Legislation, 1907.

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Paulus, fr. 1, sec. 3, idm. Non tantum corporis, sed et juris est; Papinian, fr. 49, sec. 1, idm. Possessor hoc ipso, quod possessor est, plus juris habet quam ille qui non possidet; Paulus, fr. 2, Dig. 43-17.

These questions puzzled the Roman jurisconsults, and have continued to puzzle lawyers of all nations to this day.

In Germany, however, the question has now been settled by the Civil Code. Possession is recognized as a right; it may be inherited (B. G. B., sec. 857); it may be revindicated (sec. 861); it may be transferred (sec. 870).

Whether possession as such is considered a right, or simply a fact, a great many rights include possession. But here we shall not consider the main question, but confine our discussion to the two questions: Is possession as such protected? and, Does the fact of possession lead to ownership, and under what conditions? In order not to complicate more than necessary a question already highly complicated, we shall confine ourselves to possession of immobilia.

In Rome, possession as such was protected through the possessorium and the petitorium, or the interdictum retinendæ possessionis and the interdictum recuperandæ possessionis. The first (uti possidetis) was given the present actual possessor in defense of his possession; the later was given the former actual possessor, who had been dispossessed vi, clam sive precario. The only qualification of possession in order to entitle it to either of these remedies was that it must be, or have been, animo dominii; and it must not be clandestina. But the right to possess, or whether the possession was bona or mala fide, did not enter into the question at all; these matters had to be settled under another suit. It was the mere fact of possession which was protected by the

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possessory interdicta; and it was the actual, present, now existing, and not the prior possession, which was protected. The interdictum recuperandæ possessionis was in the nature of a concession to the strict principle.

It is evident that these Roman remedies proceeded from a primitive standpoint. Seisin as such is still considered to be the main criterion for jus dominii. The war of all against all is still a comparatively recent phenomenon, and the all-important thing to do is, not so much the enforcing of rights, as the compelling of peace and quiet. The rule of beati possidentes is still good legislative policy.

These rules for the protection of possession seem never to have been abrogated while the power of Rome continued, although they must, in time, have become nearly obsolete through desuetude. Notwithstanding the saying: ubi jus, ibi remedium, the Roman law actually proceeded upon the principle: ubi remedium, ibi jus, and all formalistic systems of law do proceed, and must proceed, upon this principle; rights, as such, are recognized in a general way, but there is no general remedy for the enforcement of rights; the recognized rights do not become legally enforceable rights until a special remedy has been provided for, or made applicable to them. But when a remedy once has been provided it never dies; it may become somnolent through non-user, but it continues to live on, and is, from time to time, aroused and put into use for some special purpose. This must be the explanation why these primitive remedies live on in Justinian's codification. After Rome had developed into a mighty, civilized and highly organized state, there could be very little use for the possessory writs. Under the changed conditions there could be very little interest in litigating the naked question of possession; it now was the jus in rem which was the object of litigation.

The next question is: Did such bare possession lead to any rights in the thing?

Under the law of the twelve tables, uninterrupted possession for two years led to usucapio, led to ownership. This rule, also, discloses itself as very primitive; it is connected with the biennial redistribution of the ager. In other words, when a man, during one whole cycle of user, had possessed a share of the land animo dominii, he was recognized as the owner. The practical circum-

stances leading to such a rule may be understood when we remember the incessant feuds among small neighboring communities; those who did not return from the battle had either been killed or become slaves. The territories over which the feuds raged were very restricted; if a man did not return within two years he might be safely given up for lost.

All that was required of the possession, besides animus dominii, was that it must not be clam. As was natural under the circumstances, nobody but a Roman citizen could acquire by usucapio: adversus hostem, æterna auctoritas esto. Neither did usucapio affect anything but res mancipi (when the transfer had been made informally), but in course of time it also came to apply to res nec mancipi (when acquired from a non-owner). But title to provincial land could never be acquired by usucapio: provincialia prœdia usucapionem non recipiunt.

Such a narrow institution as usucapio could not continue, however, to satisfy, after Rome had become, not only a great state in place of a small municipality, but an international power. The new development did not take place through legislation, but in the characteristic Roman way, through prætorian edicts and decisions. First the prætor introduced prescription of claims. Then, gradually, he introduced acquisition of title through user, affecting all persons and all kinds of property. Unfortunately, he gave to this institution also the name of prescriptio: prescriptio longi temporis. Unfortunately; for ever since there has been, and now is, among legislators, courts and writers a sore confusion, caused by using the same name for two so different, and to some extent contradictory, things as the acquisition of a right by the exercise of the dominium characteristic thereof, through a certain period (usucapio-l'usucapion-adverse possession-Ersitzung-Hævd) and the extinguishment of a claim by its non-assertion for a certain length of time (prescriptio-préscription-limitation of action-Verjährung-Forældelse). Or, as a French author expresses it, referring to the same confusion in the corpus juris: "Justinien mélangea, d'une façon assez malheureuse, dans sa codification, la préscription acquisitive et la préscription extinctive."

From the requirement of the possession leading to usucapio, that it must not be clam, the jurisconsults had already deduced the further requirement that it must be justo titulo (prima facie

good) and bona fide. The same was required of the possession forming the foundation for prescriptio longi temporis.

In the Justinian laws we finally find prescriptio longissimi temporis, probably introduced through the constant contact with the barbarians (possession of which the memory of man runneth not to the contrary); the term was 30 years, and neither bona fides nor justus titulus was required. But if the possession was either vi, clam or precario, it remained vitiosa to build thereon, even a præscriptio longissimi temporis; not until such original vices had been removed, and from the time of such removal, did the possession become utilis.

However, as far as Western Europe was concerned, the law of Rome had become suspended, even before the time of Justinian, or shortly thereafter. The barbarians had taken possession everywhere and had brought with them their own laws, including those concerning land. True, these became at once influenced, and in course of time to a great extent superseded by Roman law, but this law was not the law of Justinian, but the law of the codes of Theodosius and Theodoric, as well as the jus vulgare.

All of the Teutonic tribes and peoples, including those who settled in France, knew of a certain protection for actual possession, as well as of a form of acquisitive prescription. But this protection and prescription were of a character distinctly different from the possessory interdicta and from Roman usucapio and prescriptio longi temporis. The protection was of an entirely processual character, and was connected with the old Germanic rules of evidence under which there was no question of a burden of proof, but of a privilege of proof. Actual possession was protected through the privilege of proof granted the possessor, and uninterrupted possession through a certain length of time (a year, a year and a day) gave such possessor the presumption of Rechte Gewere. But of this, further hereafter.

As to France, the laws of the Visigoths and of the Burgundians very early became swallowed up in those of jus vulgare, as expressed in the various codifications (le pays du droit écrit). Otherwise with the Franks; as late as 829 Louis le Debonnaire attempted, by one of his capitularia, to enforce the Roman conception of prescriptio in le pays du droit coutumier. But eventually the Roman conception conquered everywhere.

It may be considered doubtful, however, whether prescriptio longi temporis was recognized until modern times. "Hundert Jahre Unrecht machen nicht ein Jahr Recht" was an universal Germanic conception. As long as it was known who the real owner was it went against the grain of all Teutonic tribes to acknowledge that mere adverse possession could deprive him of his property.

But prescriptio longissimi temporis was recognized everywhere. This form of acquisitive prescription came nearest to that form of adverse possession which is expressed in the formula, that the memory of man runneth not to the contrary, or the presumption that the possession is founded upon a grant, the evidence of which has now been lost. This form of acquisitive prescription is natural and necessary with all conquering people, and all allodial rights rest thereon. The soldier in the conquering army, having received a certain piece of the enemy's land as his share of the reward awarded the "hundred" or its minor divisions, had no written evidence thereof, but if the conquest was real and lasted, until no man could remember any different condition of affairs, then it was presumed and taken for granted that the possessor held under a valid grant; otherwise, the question would have been raised long ago. This view was adopted by the later Romans, and was necessarily adopted by them, as a means of quieting titles to the lands which the quickly shifting emperors had granted to successive coloni. Justinian established a fixed time, outside of which the memory of man was not supposed to run (30 years—prescriptio longissimi temporis).

The influence of canon law tended in the same direction. Canon law was extremely strict in its requirements as to bona fides, without which prescriptio longi temporis did not run: contrà volentem agere non currit prescriptio. But the church found no difficulty in recognizing prescriptio longissimi temporis (with the emphasis on longissimi), as its requirements as to bona fides here found no application. And having recognized it, it worked it for all it was worth: the limitation against the church became much longer than that in its favor. While the latter, in most places, was fixed at 30 years, the former was everywhere longer, in France even 100 years.

In Germany and Scandinavia the old Teutonic rules remained in force. There was no real prescription, but there was a protection for possession, through which was developed something like an usucapio.

If a man's actual possession was attacked, it became his privilege to prove his right to possess. This was a privilege and not a burden, because, when the entirely formal requirements of such proof had been complied with (the oaths of a certain number of relatives, friends or neighbors), then all counter evidence was excluded and could not be introduced. Even if the proof failed him, this did not itself defeat the actual possessor; it now became the privilege and duty of the plaintiff to prove his better right to possess, and if he also failed, then the actual possessor was continued in the possession, in accordance with the so-called conservative principle, or principle of inertia, ruling in the domain of economic relations, to the effect that the actual present distribution shall not be disturbed, unless a good (or better) causa therefor is shown.

As the law of evidence changed, in this, that the privilege of proof gave way to the burden of proof, it became the duty of the plaintiff, in the first instance, to prove his better right to possess. But the protection granted the actual possessor remained the same. This is still the law of Denmark. D. L., 5-5-3, says: If a man have property in his possession and another man claims it to be his, then he who has the possession, even if it be for ever so few years, is not bound to prove his title, unless he who claims the property shall first have produced such evidence under which he might recover.

As we stated, out of this protection for possession grew a real usucapio. The actual possessor had the privilege of proof; of producing his "logh." But if his possession had been through Tres agriculturas continuata, in pace et quiete, non turbata quærominis, non quovis alio modo civili vel naturali, ex parte illius qui terras illas quæ posidentur vindicare nititur, interrupta (Archbishop Anders Sunesön's paraphrase of Les Scaniæ), then this fact alone gave him "lagha hæfth," that is, his three years' quiet possession took the place of his "logh." He was now situated, as if he actually had produced it, and as no counter evidence against a produced "logh" was permissible or admissible, the possessor

had become the owner. It will be seen that, in order to obtain this "lagha hæfth" (Lavhaevd in later Danish), the possessor must have exercised the full dominium over the property through tres agriculturas, which is generally interpreted to mean three years, or three winters. In Denmark the so-called Tre-Vangs-Drift was universally in use, that is, the land was divided into three Vange or fields; one was sown to winter grain (wheat and rye), one to spring grain (barley, oats and pease) and the third was allowed to lie fallow, and so on in rotation, forever. When we remember that nearly all land was held by village communities, with all that this implies as to cultivation, etc., we can better understand the rule. When a man had held land in quiet possession for three years, it did mean, not only what it means today, that possibly the real owner was absent or otherwise prevented; no, in addition to this it meant that the possessor had been acknowledged and accepted as the rightful possessor by all the other members of the "By-Lag," the village community. If such a condition had been allowed to exist for three harvests, if the actual possessor had been allowed, for that length of time, to do his share of the work and to take his share of the proceeds, it showed that his neighbors stood by him; that he could, without doubt, produce his "logh" on demand, and that, in all probability, he possessed by right.

This particular way of acquiring title has disappeared from Danish law with the disappearance of the old rules of evidence, and of the community-ownership of land, but as a reminiscence the name remains. When a man brings action to quiet his title, the decree he obtains is still called "Lavhævds-Dom."

As to early medieval Germany, the rules of evidence were very much like those of Scandinavia, and the protection given Gewere and rechte Gewere were in principle the same. But there is not so much interest in, or necessity for, going into the old German rules in these respects, first, because the early introduction of the recording of transfers necessarily modified the rules, but, especially, because the so-called reception of the civil law in the latter part of the 15th century changed the whole aspect, although, as we shall see, Germanic law influenced the "received" Roman law, and old Germanic principles have lately reasserted themselves. But even before the reception of the civil law a number

of rules of Roman origin had, by infiltration, forced their way into the German law, among them the prescriptio longissimi temporis, which took the place of the rule of the memory of no man running to the contrary. The term for such Ersitzung was 30 years, or a few weeks or days more. Of prescriptio longi temporis, however, there is no tangible trace.

Towards the year 1100 Justinian's codified law once more appears as a potent factor in the legal affairs of Western Europe. The reason for this is, at present, not material: whether a full copy thereof had actually been rediscovered at Amalfi; whether the increased intercourse with Byzantium had made it better known; whether the claims to greater power put forward by popes, emperors and kings needed it for their support; or whether any other particular circumstance brought it into light. The fact remains that from henceforward it was studied, expounded and applied as never before, and obtained an influence in all of Western Europe, of which there had been but few traces heretofore. It gradually became part of the droit écrit of Southern France, upon its rules were formed coutumes of Northern France, it influenced English law, directly and indirectly, to a great extent. And as canon law, in the time following, had its period of greatest power, and vastly drew upon the civil law, the latter pressed the native law from two sides, and in many cases superseded it.

When the glossators applied themselves to the study and interpretation of corpus juris they lacked, to a great extent, the historical knowledge in the light of which so much of it must be read and understood; they took it all as law, not only in existence, but as being actually practised at the time of Justinian.

But such rules as those expressed in the possessorium and petitorium, when strictly interpreted, were totally inadequate to meet the requirements of the actual situation. The question then became, how to make them read so as to fit. Rogerius, Azo, Bassianus, Accursius and others accomplished this by making a distinction between possessio naturalis and possessio civilis. The first, naturally, came to an end by the actual disseisin, while the latter was said to remain as long as the disseised possessor retained animum possidendi. This was the first step towards the protection of the prior possession. But cases would arise where possession had been lost, without the new possession being vitiosa

as against the former possession. Still, the purpose now was to protect the former possession, and for this reason recourse was had to the fiction that the actual possession was clandestina in all cases, where plaintiff could prove prior possession in himself or in his grantor. Then the original Roman rule that the actual possession was protected had, by interpretation of the Roman law itself, been changed to its opposite: it was now the lost, prior possession which received the protection. See Bartolus, In priman Digesti, etc., Lugduni, 1537, p. 270.

After the reception of the civil law in Germany the glossators were followed, but the Germanic principle again affected their results. The question of who had justus titulus was brought in, especially where it could not be proved conclusively which of the contending parties had been the original possessor. In actual cases it would often be found that the presumption of the present possession being clandestina, or otherwise injusta or vitiosa, did not correspond with the actual facts. In order to get around this difficulty, the later possessor was granted the privilege to show that the plaintiff had surrendered his possession voluntarily. And, by a natural evolution, this led to the granting to the defendant of exceptio dominii, which means that in a possessory action he was allowed to prove his ownership, provided he could do it stante pede (deed or prior acknowledgment by plaintiff), or, as far as personal property was concerned, the correctness of his averment was notorious (goods found on a thief or robber caught in flagranti). The canon law writ of remedium ex canone reintegrada led to the same result.

In other words, possessory actions, as such, had disappeared, the question of title, of the right to possess being raised and decided in every one of them. Except, perhaps, that the so-called possessorium summarissimum, allowed where there was timor armoris et scandalis, may be styled a possessory writ. But this was called forth by the conditions caused by the wars of religion, and disappeared with them.

Such was the law practised in Germany until the time of Savigny. He showed conclusively that the practised law was the direct contradiction to the law supposed to have been received, and the courts considered themselves bound to recede from their

former standpoint. The confusion caused thereby has now been done away with by the new German Civil Code.

Under the code, as stated, possession is a right, a distinction being made between Inhaber and Besitzer. The Inhaber is everybody whose relation to the thing expresses nothing more than the actual having in hand; the Besitzer is he who, in addition to this Roman possessio, also has Gewere. According to sec. 854, Besitzung requires not only tatsächliche Gewalt, but this must appear as a Herschaftverhältniss.

But Besitzung, in itself, does not lead to ownership; acquisition of title by Ersitzung has been abolished. This is a practically necessary result of the Grundbuch system, although change in boundaries does not seem to have been provided for thereby. Only two cases of Ersitzung remain. When the possession is founded upon a claim of right entered in the Grundbuch, and the possession has lasted uninterrupted for 30 years, then the possessor is recognized as the owner. And, without any entry in the Grundbuch, if the possessor has exercised Eigenbesitze for 30 years, then he may commence a proceeding to quiet his title and through Eintragung exclude the former owner. It will be seen that both of these forms of Ersitzung are prescriptio longissimi temporis, and, as to the latter form, that the Besitzung in itself does not give the title, but is a condition antecedent for the bringing of an action, by means of which the Besitzer can be entered in the Grundbuch as owner.

In old Danish law, as we have seen, the institution of Lavhaevd was known, whereby title could be obtained by uninterrupted possession for three years. But in the Jutland law of 1241 (J. L., 1-44) prescriptio longissimi temporis appears. Under this article the church acquired title through uninterrupted possession during 30 years, while to acquire such title to church land required 40 years' uninterrupted possession. There was no requirement of bona fides or justus titulus, and prescriptio longi temporis never became known to Danish law. But it is rather curious that, by two statutes of 1557 and 1558, the term (for all possessors and for all land) was reduced to 20 years. Thereafter prescription under Danish law has been possible under the conditions of longissimi temporis, but the longissimum tempus has been re-

duced to be like that of the prescriptio longi temporis inter absentes. At present the rule is contained in D. L., 5-5-1: Whatever property a man may have had in actual possession for 20 years, without any complaint to the court having been made, that he shall keep, without proving any other title, without responsibility, and absolutely, unless it be proved that he held it either in mortgage, as a fief, or as bailee (in other words, precario).

It may be asked, How there could be room for three-year Lavhaevd and for 30- (40)-year prescription at the same time? The answer probably is that Lavhaevd was exclusively an intra-village institution, while prescription (Haevd) was an inter-village way of acquiring title. The present 20-year Haevd is exclusive of any other form of acquisitive prescription.

As stated above, in early medieval France two forms of acquisitive prescription were known, the primitive Germanic form and the prescriptio longissimi temporis. But in course of time prescriptio longi temporis was introduced, partly through royal ordinances, often expressive of agreements entered into with the church, and partly through the coutumes of the various parlaments. The rules of today (confusing, like Justinian, acquisitive and extinctive prescription) are contained in Livre III, Titre XIX, of the Code Civil. The form in which they appear has mostly been given them by Donat, and he, in his turn, drew them from the coutume of the Parlament de Paris. Article 2219 says: La préscription est un moyen d'acquérir ou de se libérer par un certain laps de temps, et sous les conditions determinées par la loi. Article 2236 ordains that he who holds under a titre précaire cannot claim by prescription: melius est non habere titulum quam habere vitiosum. This latter rule is recognized in article 2262 establishing a prescriptio longissimi temporis, the limitation being 30 years, where no bonne foi or juste titre is required, provided the possession has continued actual, has been animo dominii, and has not been vicieuse. This form is called prescription de trente ans. Then there is, according to article 2265, the prescription de dix @ vingt ans, the requirements for which are: Juste titre, la bonne foit du possesseur; une possession prolonguée pendant un delai de dix @ vingt ans. No title can be acquired, how-

ever, if the possession has been tainted de précarité, de clandestinité, de violence. But a possession originally vicieuse may become utile after the original vices have been removed. In all cases the possession must be exclusive.

In English-American law the questions here touched upon are so involved and difficult to unravel that we shall leave them untouched upon at present. We hope, however, at some future time to be able to give to the subject sufficient study to enable us to set forth the main principles, and to compare them with continental rules.

D. FOREIGN LEGISLATION, JURISPRUDENCE AND BIBLIOGRAPHY.

1. America.

LEGISLATION OF THE DOMINION OF CANADA AND ITS PROVINCES—ALSO OF NEWFOUNDLAND.

A large part of the legislation is caused by the war, in which Canada and Newfoundland take an active part. In the Dominion practically all the legislation of 1914 (second session) has its origin in the war. In 1915, caps. 8, 11 and 23; also, in the provinces:

Ontario, caps. 1, 8, 11, 12, 37.
New Brunswick, caps. 11, 12.
Nova Scotia, caps. 6, 7, 8.
Manitoba, cap. 88.
British Columbia, caps. 3, 36.
Newfoundland, cap. 7.

Some of the provincial legislation is interesting to the American lawyer as showing the powers of these parliaments without constitutional limitation intensively.

In Ontario, cap. 99 prevents an appeal from a trial judgment. In Quebec, caps. 156, 157, 160, 161 and 166 confer powers on the executors of certain wills beyond those conferred by the wills themselves. In New Brunswick, cap. 52 cancels two Crown grants. The provisions concerning members of the Bar may be noted. In all provinces the Bar has control of its own curriculum, etc.; in Ontario since 1797, and the courts have no right to admit

or call to the Bar; that power is vested in the Law Society which is governed by benchers elected by the barristers of the province (I speak generally). Sometimes it is desirable to allow some one to be called to the Bar who has not fulfilled the prescribed requirements, *e. g.*, in Ontario (1) matriculation at a university; (2) five year under articles; (3) two years at law school; (4) passing the prescribed intermediate and final examinations (a graduate in arts or law of a British university has his time reduced to three years). The legislature is then appealed to for an enabling act, such as Ontario, cap. 97; Quebec, caps. 167, 168, 169, 170 and 171.

The medical, dental, pharmaceutic, etc., professions are organized in much the same way in some provinces; hence the statute. Quebec, caps. 174, 175, 176.

Workmen are now, in some of the provinces, entitled to compensation for injuries in the course of their employment, the latest province to fall into line being Nova Scotia, cap. 1.

British Columbia provides for camps at a distance from a doctor, cap. 4.

Workmen are protected from themselves by Quebec, cap. 71, whose paternal care extends to protection from private detectives, cap. 57; and in New Brunswick cities and towns are given the power to protect themselves from railway nuisances, cap. 44. Farmers receive protection from agricultural implement vendors in Saskatchewan, cap. 28.

The two prairie provinces, Saskatchewan (cap. 22) and Alberta (cap. 18), permit municipalities to provide insurance against hail.

A curious new industry, that of breeding the silver or black fox, has been carried on successfully for some years in Prince Edward Island. This is responsible for the act requiring enrollment of such foxes, cap. 255, and for the several acts incorporating fox companies, caps. 24, 38, 39, 40, 41, 42 and 43.

An echo is heard from the far Yukon, cap. 8. That *caput lupinum,* the motor vehicle, after receiving attention and malediction in the provinces, now comes in for slating also in the Yukon, cap. 14.

Prohibition is making its way. Saskatchewan, cap. 39, allows the sale only by government agents (Ontario is now about to sub-

mit an even more stringent prohibition law to the people). Newfoundland provides for a plebiscite, cap. 9.

Company's acts, insurance acts, etc., are being gradually codified.

The other legislation is of only local interest. I append an abstract of the legislation referred to:

DOMINION OF CANADA.

1914, Second Session, Stat. 5 Geo. V:

Cap. 1. Grant of $50,000,000 for defence of Canada.

Cap. 2. Providing for war measures, censorship, deportation, arrest, trading, etc.

Cap. 3. Finance Act, authorizing proclamation permitting advances in Dominion notes to banks, payment by banks in Dominion notes, etc.

Cap. 4. Issue to any amount of Dominion notes.

Cap. 5. Tariff amendment.

Cap. 7. Naturalization.

1915, Stat. 5 Geo. V:

Cap. 8. Special taxes for war purposes on banks, trust companies, insurances, telegrams and cables, railway and other tickets, cheques, postage, etc.

Cap. 11. Provision for soldiers outside of Canada voting.

Cap. 20. Farmers and settlers in Alberta and Saskatchewan to be provided with seed grain by the government.

Cap. 23. One hundred million dollars voted for defence.

ONTARIO.

1915, Stat. 5 Geo. V:

Cap. 1. War tax of 1 mill on the dollar on all ratable property, to be raised by the municipalities and paid to the province.

Cap. 8. Further tax on corporations.

Cap. 11. Enabling executors of the estate of the deceased Senator Fulford to take from the estate $100,000 to assist the army, etc.

Cap. 22. Preventing actions on mortgages without consent of the court.

Cap. 37. Allowing municipalities and public utility commissions to subscribe to patriotic funds.

Cap. 99. Declaring the judgment of the Chief Justice of the King's Bench at the trial final and conclusive, and binding on all born or unborn interested in the estate of the late G. T. T.

Cap. 97. Authorizing the Law Society of Upper Canada to admit J. A. E. to practise, notwithstanding that he had not matriculated at a university or been formally under articles, he to pass such examinations as the Law Society should prescribe.

QUEBEC.

1915, Stat. 5 Geo. V:

Cap. 28. Respecting the tenure of lands in the Magdalen Islands, giving occupants the option of paying by instalments.

Cap. 57. Compelling private detectives to take out a permit from the provincial treasurer and to give security to the amount of $2000 for "the perfect, honest and legal accomplishment of the duties incumbent on him in his capacity of private detective."

Cap. 71. Forbidding employers to retain any part of their employees' wages (even with their consent) to pay for accident or sickness insurance.

Caps. 156, 157, 160, 161, 166, etc. Extending the powers of executors beyond the provisions of the will.

Caps. 167, 168, 169, 170, 171. Authorizing the Bar of Quebec to admit the persons named to the Bar, notwithstanding their failure to comply with the rules in all particulars.

Caps. 174, 175, 176. Similar legislation for the College of Dental Surgeons of the Province of Quebec.

NEW BRUNSWICK.

1915, Stat. 5 Geo. V:

Cap. 7. Extra taxation of companies.

Cap. 11. Authority given to Governor-in-Council to declare a moratorium.

Cap. 12. Provision for gift to the army and navy of 100,000 bushels of potatoes and to Belgium of $150,000.

Cap. 36. Province to prepare and sell school books.

Cap. 44. Authorizing cities and towns to pass by-laws to prevent smoke, ringing of bells and blowing of whistles.

Cap. 52. Cancelling two Crown grants to private individuals.

NOVA SCOTIA.

1915, Stat. 5 Geo. V:

Cap. 1. A Workmen's Compensation Act, forming a board to enquire into each case and award compensation out of a fund levied on employers and preventing the courts entertaining claims of this kind.

Cap. 4. Compelling attendance at schools of all children of school age.

Cap. 6. Authorizing municipalities to subscribe to patriotic funds.

Cap. 7. Authorizing a gift of $100,000 to relieve distress in the Mother Country caused by the war.

Cap. 8. A war tax of 1 mill on the dollar on all assessable property.

PRINCE EDWARD ISLAND.

1915, Stat. 5 Geo. V:

Cap. 14. A Company's Act consolidating and amending the law of joint stock companies.

Cap. 255. Compelling the enrollment of all foxes kept in captivity on the island.

Caps. 24, 38, 39, 40, 41, 42 and 43. Incorporating silver fox companies.

MANITOBA.

1915, Stat. 5 Geo. V, Second Session:

Cap. 37. Authorizing the University of Manitoba and the Law Society of Manitoba to establish a law school; giving the benchers of the Law Society power to disbar barristers, and strike off solicitors and students for misconduct.

Cap. 88. Preventing actions being brought during the war against volunteers, reservists and their dependents.

SASKATCHEWAN.

1915, Stat. 6 Geo. V:

Cap. 5. Ratifying a sale to the Equitable Life Insurance Company of $2,500,000 provincial debentures.

Cap. 9. Instituting a court of appeal.

Cap. 22. Authorizing hail insurance by municipalities.

Cap. 28. Requiring each vendor of farm implements to file a list, with a full description of implements he has for sale, with the Minister of Agriculture each year by February 1, with price, and prescribing forms of contracts for sale on credit.

Cap. 39. Prohibits the sale of liquor except by government agents after a provincial referendum.

ALBERTA.

1915, Stat. 5 Geo. V:

Cap. 6. Instituting a Board of Public Utility Commissioners having jurisdiction over railway (provincial), telegraph, telephone, etc., companies, with very extensive powers of regulation.

Cap. 8. Consolidating the law respecting insurance.

Cap. 18. Authorizing municipal hail insurance.

BRITISH COLUMBIA.

1915, Stat. 5 Geo. V:

Cap. 3. Exempting members of the army from certain provisions of the mining laws.

Cap. 4. Compelling employers of labor of 30 men or upwards, if more than six miles from the office of a medical practitioner, to keep at least one person competent to render first aid, the qualifications of such person to be determined by the secretary of the Provincial Board of Health.

Cap. 36. Allowing the benchers of the Law Society to pay $10,000 from the funds of the society to any patriotic fund, etc.

YUKON TERRITORY.

1914 ordinances:

Cap. 8. Prohibiting hunting or killing of foxes under one year of age between April 1 and June 1; compelling the registration of foxes in captivity and prohibiting their export without permit;

also prohibiting the approach without leave of owner or caretaker of a fox ranch or enclosure within 25 yards of the same.

Cap. 14. Regulating speed, etc., of motor vehicles.

NEWFOUNDLAND.

1915, Stat. 6 Geo. V:

Cap. 7. Incorporating a "patriotic fund."

Cap. 9. Providing for a plebiscite on prohibition.

W. R. R.

ARGENTINA.

LEGISLATION.

Law No. 9677, October 5, 1915 (Boletin Oficial, October 12, 1915, No. 6522).

It creates a *National Commission for Cheap Houses* of five members appointed by the Executive (art. 1) and appropriates funds (art. 221) to be expended by the commission in building houses to be sold or leased to workmen or low-salaried employees with families (arts. 3, 4). Payments to be made monthly, calculated with interest at 3 per cent per annum and 5 per cent per annum for amortization (art. 5). Purchasers or their heirs have the right to rescind the sale and the sale is also rescindable for inexcusable default for five consecutive months; in either case the purchaser is entitled to a return of payments made on account of principal and value of improvements, less cost of necessary repairs (arts. 6, 8). The house cannot be sold or leased or used for business purposes until final deed has been obtained (art. 7). Final deed is given on completion of payments and can be recorded without fees (art. 9). Building materials and supplies for the houses are exempt from customs duties (art. 10) and the houses are, in most cases, free from land taxes for a period of 10 years (art. 11) and from inheritance taxes (art. 14). The commission is likewise empowered to insure the lives of purchasers to secure future payments (art. 16 *seq.*). Certain salutary restrictions on premature partition suits are incorporated (arts. 19, 20). Private corporations, under the supervision of the commission, to carry out the same philanthropic objects, and with similar tax exemptions, are also contemplated (arts. 3, 12, 13). The Postal Savings Bank is authorized to lend money to the commission

(art. 21). Penal provisions to safeguard the proper working of the law are provided (art. 25 *seq.*).

The commission was appointed October 21, 1915.

Law No. 9688: Workmen's Compensation Act, October 11, 1915. Boletin Oficial, October 21, 1915 (No. 6530).

Liability is imposed on employers for accidents to employees and workmen during the employment by reason of or in the course of the occupation, or for inevitable accident or *vis major* inherent to the work (art. 1). The liability is restricted to employees or workmen whose annual salary does not exceed three thousand (3000) pesos (about $1200), and to enumerated employments (art. 2). The incapacity must be for more than six days (art. 3). There is no liability when the accident was caused intentionally by the employee or was due to his gross negligence (*supla grave*), or to *vis major* extraneous to the work (art. 4); with these exceptions, the employer's liability is presumed (art. 5). The "employer" is in general liable, although the work is carried on by subcontractors (art. 6). Employer may provide insurance (art. 7). In case of death or total disability, the compensation is equal to the pay received for 1000 days, not to exceed 6000 pesos (about $2400). The compensation is paid into the National Pension Office, invested in government securities and the income paid monthly to the beneficiaries (art. 9). The indemnity is enforced in the court, at the election of the plaintiff, of the place of the accident or of the defendant's domicile (art. 15). The plaintiff has the right to elect between the act and his common-law rights (art. 17). Right of action against third parties is not barred (art. 18). The period of limitation is one year (art. 19). The law prescribes the requirements exacted from insurance companies (art. 20, 21). Compensation for occupational diseases is also provided for (chapter IV). Any contract releasing from liability under the law is void (art. 23). Notice of the accident must be given by the workman or his family to the police or judicial authorities, under penalty of a reduction of 25 per cent in the compensation (within 48 hours; decree of November 9, 1915, Boletin Oficial, November 19, 1915), and by the employer within 24 hours, under penalty of a fine (art. 25). The nation is liable to suit the same as private employers (art. 27).

Law. No. 9698 (Boletin Oficial, No. 6528, October 19, 1915).

It amends art. 675 of the Commercial Code in regard to the issuance of execution on bills of exchange.

PROVINCE OF BUENOS AIRES.

Law of January 15, 1915, adopts a new Code of Criminal Procedure. (Revista de Legislación y Jurisprudencia, March, 1915, pp. 420-457.)

Law of January 5, 1915, New Inheritance Tax Law. (Revista de Legislación y Jurisprudencia, April, 1915, p. 633.)

JURISPRUDENCE.

Cattena *et al vs.* Vieyra (Cam. 2ª de Ap. Civil, B. A., May 4, 1915, Boletin Judicial, June 9, 1915).

If the driver of an automobile has been held guilty in a criminal proceeding of causing death of decedent his culpability cannot be disputed in a civil suit by the heirs of the decedent against the owner of the car, the employment being admitted. The parents are included among the heirs, regardless of whether the decedent was a legitimate or natural child.

Paradiso *vs.* Varela (Cam. 1ª de Ap. Civil, B. A., May 4, 1915, Bol. Jud., June 7, 1915).

The grantee of record of real estate succeeds to all the rights of his grantor against a lessee, and is entitled to collect the rent, even though the lessee is ignorant of the transfer, unless the latter has in good faith paid it to the grantor.

Martinez *vs.* Leisard (Cam. 2ª de Ap. Civil, B. A., April 10, 1915, Bol. Jud., May 30, 1915).

The purchaser is entitled to rescind a sale of lots where he relied on maps referred to in the contracts showing a much shorter distance from a railroad station than the actual distance, even though he was negligent in not inspecting the property.

Bartilome *vs.* Costa (Cam. de Ap. Comercial, B. A., November 17, 1914, Bol. Jud., May 28, 1915).

The manufacture of bricks is trading, for the purposes of the Commercial Code.

In re Chubut Railway Co. (id. November 17, 1914, id.).

The inscription in the Public Commercial Registry of a loan agreement by a foreign corporation, under which debentures are issued, is subject to the payment of stamp taxes.

In re Wecthein, Ltd. (Cam. de Ap. Comercial, November 21, 1914, Bol. Jud., May 26, 1915).

A partnership cannot be adjudicated bankrupt after dissolution and transfer of the assets and liabilities to one of the partners.

Crivelli *vs.* Aikens de Reynolds (Cam. de Ap. Civil, B. A., May 4, 1915, Bol. Jud., June 20, 1915).

One who is not a broker cannot recover commissions for bringing about a sale of real estate.

Dunant y Mallet *vs.* Mendez (Cam. 2ª de Ap. Civil, B. A., May 14, 1915, Bol. Jud., June 19, 1915).

One contracting for the services of an architect and accepting the plans and specifications is obligated to pay the reasonable value thereof, even though no use be made of the plans and specifications.

Martelli *vs.* Baldassani (Cam. de Ap. Comercial, B. A., June 10. 1915, Bol. Jud., June 19, 1915).

Mere possession of a *non-negotiable* instrument, the endorsement of the alleged assignor not being duly authenticated, is not sufficient proof of an assignment to the holder.

Vionnet Hnos. *vs.* Ocantos Zorardo (Cam. de Ap. Comercial, B. A., June 8, 1915, Bol. Jud., June 17, 1915).

An incomplete endorsement only authorizes the holder of commercial paper to present for payment and to protest; and subsequent endorsements, although complying with all the requirements of the law, do not transfer title.

Fisco Nacional *vs.* Soldatte Hnos. (Federal Court of Appeals of the Capital, June 2, 1915, Bol. Jud., June 15, 1915).

The statute of limitations in suits for penalties is a matter of public policy, and it is the duty of the judge to declare the action prescribed, even though the statute be not pleaded.

Aymosso in Bankruptcy (Cam. de Ap. Comercial, B. A., June 5, 1915, Bol. Jud., June 12, 1915).

Whether or not a photographer is a trader, for the purposes of the Commercial Code and bankruptcy proceedings, is a question to be determined upon the facts of each particular case.

Rubianes *vs.* Rissotto & Co. (Cam. de Ap. Comercial, June 5, 1915, Bol. Jud., June 12, 1915).

Upon dismissal of bankruptcy proceedings creditors are reinvested with their individual rights of action against the debtor.

Villanueva *vs.* Municipality of the Capital (Cam. 1ª de Ap. Civil, B. A., May 17, 1915, Bol. Jud., June 10, 1915).

Public juristic persons, including the municipality of the capital, are not liable for the acts of their agents executed beyond the scope of their official duty and in violation of the laws and regulations governing their proceedings. In the case at bar, the municipality is not liable for damages to the plaintiff caused by the resolutions of the municipal intendente which were not in conformity with the ordinances in force.

Martinez *vs.* Garamendy (Cam. de Ap. Comercial, B. A., June 26, 1915, Bol. Jud., July 7, 1915).

Dating is an essential requisite to a perfect endorsement (art. 626, Commercial Code); an undated endorsement only authorizes the holder to demand payment or protest for non-payment and does not transfer title.

Pietranera *vs.* Voltaeri (Cam. de Ap. Comercial, B. A., June 24, 1915, Bol. Jud., July 6, 1915, affirming on opinion below).

The courts are without jurisdiction to enjoin transfer by a debtor of property situated abroad. Montevideo Convention of 1889 on Private International Law did not make such an exception to the general rule of territoriality.

Pellegrini *vs.* Sarda (Cam. de Ap. 1ª Civil, B. A., May 8, 1915, Bol. Jud., July 5, 1915).

An employee entering employment upon a promise to be promoted to manager if he proved capable of filling the position has no cause of action against the employer for the latter's failure to comply, the promotion being at the exclusive will of the latter.

Del Rio Fernando *vs.* Molina Mendez (Cam. 1ª de Ap. Civil, B. A., August 28, 1915, Bol. Jud., October 4, 1915).

The owner of a building from which soot and smoke are discharged, who has failed to comply with municipal ordinances governing the construction of chimneys, is liable civilly for damages, evidenced by decreased rental value thereby caused to a neighboring building.

Simon *vs.* Zuckerman (Cam. 1ª de Ap. Civil, B. A., August 26, 1915, Bol. Jud., October 5, 1915).

Discharge of the plaintiff, lack of probable cause and malice are necessary to sustain an action for malicious prosecution.

id. Varela *vs.* Castello (Cam. 1ª de Ap. Civil, B. A., May 6, 1915, Bol. Jud., July 8, 1915).

Enciso *vs.* Igarteburu (Bol. Jud., October 8, 1915).

A person signing a promissory note with the word "guarantor" preceding his signature has no right to demand that execution first issue against the other parties to the instrument, his obligation being *in solidum*.

Di Tullio *vs.* Sancho (Cam. 1ª de Ap. Civil, B. A., August 14, 1915, Bol. Jud., October 11, 1915).

Ratification by the principal of a contract entered into by an unauthorized agent is not invalidated by an error imputable solely to the principal's negligence.

Santarsiero *vs.* Empresa de Tramways Anglo-Argentina (Cam. 1ª de Ap. Civil, B. A., August 21, 1915, Bol. Jud., October 11, 1915).

Violation of city ordinances is evidence of negligence causing injury to the person. A child under 11 cannot be held guilty of contributory negligence.

Neira de Calvo *vs.* La Edificadora (Cam. 1ª de Ap. Civil, B. A., August 26, 1915, Bol. Jud., October 14, 1915).

Owner of record of a building is liable for negligence in its demolition, even when carried on by a person holding under a contract for purchase.

Weill *vs.* Otero (Cam. de Ap. Comercial, B. A., October 2, 1915, Bol. Jud., October 16, 1915).

The testimony of handwriting experts is merely an aid, but not conclusively binding on the judge.

Schaumeyer *vs.* Banco del Rio de la Plata (Cam. de Ap. 1ª, B. A., May 24, 1915, Bol. Jud., July 11, 1915).

Suit for an accounting will not lie where no contract or act of agency is proven.

Sierra *vs.* Newberry (Cam. 1ª de Ap., B. A., May 4, 1915, Bol. Jud., June 25, 1915).

An unliquidated claim not yet payable cannot be used as a set-off.

Masciorini *vs.* Cia Primitiva de Gas (Cam. 2ª de Ap. Civil, B. A., June 8, 1915, Bol. Jud., June 27, 1915).

The owner of real estate is liable for injury caused by coal dust in unreasonable quantity, *i. e.*, exceeding the ordinary incommodities of the neighborhood, issuing from his premises and carried by the wind upon neighboring houses, unless he proves that there was no fault or negligence on his part.

Re Bruno Lydia (Bol. Jud., June 22, 1915).

In the absence of proof that the accused is a trader, a conviction for the crime of fraudulent bankruptcy cannot be upheld. Such crime can only be committed by one in trade. Maintaining under the name of hotels what are really houses of prostitution does not constitute trading.

Zubiaurra *vs.* Dufour (Cam. 1ª de Ap. Civil, B. A., June 25, 1915, Bol. Jud., July 31, 1915).

The extension of a mortgage by mutual agreement is presumed to be on the same terms, except as to maturity, as the original mortgage.

Passicot *vs.* Gandulfo (Buenos Aires, Cam. 1ª de Ap. Civil, May 29, 1915, Bol. Jud., July 18, 1915).

A contract obtained by force or threats cannot be annulled if it has been expressly ratified after the cessation of the acts of violence.

Monsegur *vs.* Almeeda (Cam. de Ap. Comercial, June 3, 1915, Bol. Jud., July 14, 1915).

Real or symbolical delivery is necessary to constitute a pledge.

That a person not registered as a broker is not entitled to commissions was held in:

Cornalli Baldí *vs.* Rocca (Cam. 1ª de Ap., April 27, 1915, Bol. Jud., June 1, 1915); and

Provost *vs.* Vogel (id. July 3, 1915).

But in the case of

Ramella *vs.* Ponce de Leon (Cam. 1ª de Ap. Civil, B. A., April 10, 1915, Bol. Jud., May 10, 1915)

held where the services rendered are not those of brokerage, but of assistance in preparing the titles and transfers, plaintiff is entitled to reasonable value thereof.

Amillach *vs.* Volverde (Cam. 1ª de Ap. Civil, B. A., April 27, 1915, Bol. Jud., May 31, 1915).

The landlord has the right to distrain for non-payment of rent, notwithstanding the property has been sold by the tenant and removed, provided the right be exercised within the time prescribed by the Civil Code.

Estate of Paglieri (Cam. 2ª de Ap. Civil, B. A., August 3, 1915, Bol. Jud., August 21, 1915).

Appointment in a will of a guardian of the person is void and of no effect when the testator is not a parent of the infant, notwithstanding he leaves him a legacy.

Ribroacchi *vs.* Midland Railway Co. (Cam. 2ª de Ap. Civil, July 27, 1915, Bol. Jul., August 12, 1915).

Both the plaintiff and the defendant being equally guilty of negligence, the damages must be divided equally between them.

Re Rabagliati (Cam. de Ap. Comercial, B. A., September 25, 1915, Bol. Jud., October 25, 1915).

A trader who has failed to keep books of account as required by law cannot avail himself of the benefits of the bankruptcy law.

Parcus *vs.* Weinstein (Cam. de Ap. Comercial, November 27, 1915, Bol. Jud., December 22, 1915).

Rights inherent to the character of a partner are not assignable; hence, the assignee of a partner's interest in the firm cannot demand an accounting nor an inspection of the partnership books from the liquidator.

Re Santos Godino (Cam. de Ap. Criminal, B. A., November 12, 1915, Bol. Jud., November 22, 1915).

Lays down the rule as to the defense of insanity in criminal cases. "Legal" insanity is distinguished from "medical" insanity. The law does not require the guilty party to be able to distinguish right and wrong; only such a complete disturbance of the mental faculties as to amount to imbecility exempts from punishment. If the acts are conscious and voluntary they are criminal.

Bargas *vs.* Miranda (Cam. 2ª de Ap., November 9, 1915, Bol. Jud., November 26, 1915).

A prolonged and extraordinary flood inundating and depriving the lessee of the use of two-thirds of the leased lands is such a *vis*

major as to authorize the lessee to surrender the premises and rescind the lease.

Calabrese *vs.* Banco de la Nación (Cam. de Ap. Comercial, November 16, 1915, Bol. Jud., November 27, 1915).

A bank is liable, contrary to the general rule, to repay to its depositor payment made on a check, signature of the drawer whereon was forged, where it appeared that the forgery must have been based, due to negligence or wrong of an employee of the bank, on a genuine signature in books kept by the bank.

Dahm de Kessler *vs.* Banco Alemán (Cam. de Ap. Comercial, October 26, 1915, Bol. Jud., November 17, 1915).

A bank is protected in making payment to a husband as administrator of the conjugal partnership of funds deposited by the wife not proved to be dotal property.

Consul General of Germany in Charge of the Turkish Consulate *vs.* Arslan Emir Emin (Supreme Court of the Nation, October 16, 1915, Bol. Jud., November 7, 1915).

The Supreme Court has jurisdiction of an original suit instituted by a foreign consul to obtain possession of the archives and property of the consulate in order to protect the exercise of his official duties.

Robin *vs.* Zelmar (Fed. Court of Appeals, B. A., October 21, 1915. Bol. Jud., November 6, 1915).

The name "Bromose," not being a fancy name unrelated to the product, cannot be appropriated as an exclusive trade name for a chemical product.

Estate of Aguirre (Supreme Court of the Nation, September 25, 1915, Bol. Jud., November 2, 1915).

Domicile, for jurisdictional purposes in inheritance proceedings, is where a man's family lives, not where he carries on his business.

Cia. Alemana *vs.* Municipality of Moron (Supreme Court of the Nation, September 25, 1915, Bol. Jud., November 2, 1915).

The grant of an exclusive franchise for a limited term by a municipality to a private company for electric lighting is not a violation of the constitutional provisions for liberty of work and industry. These latter rights are intended for the protection of

the inhabitants of the country as such, and do not apply to governmental authorities nor to industries outside the sphere of the common law and requiring the use of public property. The opinion cites Cooley on Constitutional Limitations and 115 U. S. 650.

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PERSONAL NOTES. NECROLOGY.

Dr. Juan B. Siburu died in 1915 at the age of 50. He had established a notable record as a judge, professor of law, and especially as the author of the leading commentaries on the Commercial Code, unfortunately not completed. The five volumes published embrace only a general introduction, which has been translated into French and Italian, and the first 449 articles.

For biographical sketch see *Regista de Derecho, Historia y Letras,* May, 1915, p. 149. P. J. E.

BOLIVIA.

LEGISLATION.

1914.

Law of January 1. The Banco de la Nacion is given the exclusive privilege of issuing paper money. The privilege is granted for 25 years.

Law of January 2 prescribes regulations for the Banco de la Nacion.

Law of January 3 imposes a tax of ½ per cent on conveyances of land.

Law of January 5 imposes an annual tax of 2 per cent on dividends or profits from industrial enterprises (except agricultural) in Bolivia. Publication and filing of annual balance sheets or reports is required, under penalty of heavy fines. The law affects foreign as well as domestic corporations.

Law of January 6 prescribes the requirements for banking institutions, foreign or domestic. Foreign banks are required to have a minimum capital in Bolivia of 50,000 pounds sterling, 20 per cent whereof must be in government securities, and must pay a tax of 5 per cent of their gross profits. Five per cent cash reserve is required to be maintained.

Law of January 9 imposes a tax of ¼ per cent on transfers of shares, bonds and negotiable paper, etc.

Law of January 17 imposes an export tax on bismuth and copper.

Law of January 21 repeals the export tax on wool and certain hides.

Decrees of January 24 prescribe regulations for the law of January 6 (supra) as to banks.

Circular of the Department of Hacienda of February 7 explains the scope of tax.

Law of January 5, 1914; see also

Resolution of March 17. By resolution of October 21 it is provided that losses sustained abroad cannot be offset against profits in the country for the purpose of ascertaining the tax.

Resolution of April 4 authorizes a new publication of the Mercantile Code.

Supreme resolution of June 1 and law of November 14 ratify the "Bryan" arbitration treaty with the United States, signed at Washington, January 22, 1914.

Supreme resolution of June 20 and law of November 14 ratify the commercial treaty with Japan, signed at La Paz on April 13, 1914.

Supreme resolutions of June 20 and law of December 10 ratify the conventions on International Commercial Statistics and Permanent International Council therefor, signed at Brussels, December 31, 1913.

Supreme decree of August 8 declares a state of siege. Supreme decree of December 31 suspended the state of siege.

Supreme decree of August 8 decreed a moratorium. Law of October 24 regulates the application and use of the moratorium.

Supreme decree of August 10 and law of December 12 authorize the expropriation as a public necessity and utility, of necessaries and imported articles.

Supreme resolution of August 24 makes it the duty of mining companies to give immediate notice to the authorities of accidents.

Law of November 14 gives holders of mortgage bonds (*letras*) issued by mortgage banks doing business in the republic the right to elect one member of the Board of Directors and one alternate. Election is had by a majority vote of the holders, 20 per cent of outstanding bonds being necessary for a quorum, and each holder of bonds to the amount of 5000 bolivianos is entitled to one vote. The director so elected must own bonds to the amount of 10,000 bols.

Law of November 23 authorizes reduction to 30 per cent of the metallic reserve against bank notes.

Decree of November 30 regulates the Bureau of Railroads.

Law of December 4 approves the extradition treaty with Ecuador, signed at Quito, July 21, 1913.

Law of December 21 imposes a tax on railways of 3 per cent on the net profits. Overhead charges abroad cannot be deducted in calculating the profits. Exemption is granted from depart mental taxes.

Anuario de Leyes y Disposiciones Supremas de 1914. Compilados por Gregorio Reynolds. La Paz, 1915. P. J. E.

BRAZIL.

The Brazilian Congress has been in practically continuous session since before the outbreak of the European war in August, 1914. It has been seriously engaged in consideration of the critical economic situation added by the war to the already acute conditions which afflicted the country. Consequently there has been very little federal legislation of a general character.

It is interesting to note that by Decree No. 2881 of November 9, 1914, the congress approved and the President ratified the 15 conventions and resolutions adopted at the fourth International American Conference, held in Rio de Janeiro in July and August, 1910.

The crowning work of the congress, in the midst of the economic crisis which has consumed the attention of the country, has been the enactment of a new civil code for Brazil.

This work, which has been under discussion before a special committee of congress for several years, was finally approved by the special committee, with due solemnity, on December 25, 1915, and was enacted by congress and promulgated by the President on January 1, 1916. The new code goes into effect on January 1, 1917.

The new Brazilian civil code consists of only 1828 articles, which are declared, in article 1 of the "general part," to "regulate the rights and obligations of the private order concerning persons, property and their relations." It is the shortest civil code with which this editor is acquainted, as may be better understood by a comparison with the eight other civil codes in his library, which are as follows: Argentina, number of articles 4051; Chile, 2524; Cuba, 1976; France, 2281; Germany, 2603; Mexico, 3823; Spain, 1976; Uruguay, 2392. It may be wondered how such differences in the volume of contents can exist, when each code purports to cover the entire body of "civil rights and obligations" of the inhabitants of the several countries concerned.

It is naturally impossible to make any sort of adequate review of this new code within the scope of this article. It may be stated that this editor is engaged in the translation of the entire code into English, and it will probably be available within several months. A few of the articles selected from the text of the code follow:

CIVIL CODE OF BRAZIL.

INTRODUCTION.

Article 1. The law is obligatory throughout the Brazilian territory, in its territorial waters, and even in foreign countries, in so

far as international principles and conventions recognize its extra-territoriality.

Art. 2. Laws shall go into effect, when they provide no other term, in the federal district three days after they are officially published, 15 days in the State of Rio de Janeiro, 30 days in the Maritime States and in Minas Geraes, 100 days in the others, including the localities not constituted into states.

In foreign countries they will take effect four months after they are officially published in the federal capital.

Art. 5. No one is excused by claiming not to know the law; neither by reason of the silence or obscurity or uncertainty of the law is a judge excused from rendering judgment or proceeding with a case.

Art. 6. The law which creates exceptions to general rules, or restricts rights, embraces only the cases which it specifies.

Art. 7. In cases of omission, the provisions concerning analogous cases are applied, and where there are none such, the general principles of law (*direito*).

Art. 8. The national law of the person determines the civil capacity, the rights of family, the personal relations of married persons, and the regimen of the marital property, it being lawful in the latter case to adopt the Brazilian law.

Art. 9. The law of the domicile, and in default of it, the law of the residence, shall be subsidiarily applied:

I. When the person has no nationality;

II. When two nationalities are attributed to him, by reason of an unsettled conflict between the laws of the country of birth and those of the country of origin; if one of these countries is Brazil, the Brazilian law shall prevail.

Art. 10. Property, movable and immovable, is under the law of the place where situated; however, movables for his personal use, of which he has always with him, as well as those intended for transportation to other places, remain under the personal law of the owner.

Movables, the situation of which is changed pending a real action affecting them, continue subject to the law of the situation which they had at the beginning of the suit.

Art. 11. The extrinsic form of acts, public or private, is governed according to the law of the place in which they are executed.

Art. 12. The means of proof are governed according to the law of the place where the act, or fact, which is to be proven took place.

Art. 13. With respect to the substance and the effect of obligations, the law of the place where they were contracted shall govern. unless otherwise stipulated.

However, the Brazilian law shall always govern:

I. Contracts made in foreign countries, when they are to be performed in Brazil.

II. Obligations contracted between Brazilians in a foreign country.

III. Acts relative to immovables situated in Brazil.

IV. Acts relative to the Brazilian mortgage system.

Art. 14. Intestate (legitima) or testamentary succession, the order of inheritance (ordem da vocação hereditaria), the rights of heirs, and the intrinsic validity of the provisions of the will, whatever may be the nature of the property or the country where it is situated, subject to the provisions of this code regarding vacant inheritances (heranças vagas) in Brazil, shall obey the national law of the deceased; if the latter, however, was married to a Brazilian woman, or has left Brazilian children, the Brazilian law shall be applied.

The Brazilian consular agents may serve as public officials in the execution and approval of the wills of Brazilians made in a foreign country, observing the provisions of this code.

Art. 15. The law of the place where an action is brought governs the competency, the form of the process, and the means of defence; the Brazilian tribunals being always competent in suits against persons domiciled or resident in Brazil, on account of obligations contracted or responsibilities assumed in this or in another country.

Art. 16. The judgments of foreign courts shall be executed in Brazil, subject to (*mediante*) the conditions which the Brazilian law may prescribe.

Art. 17. The laws, acts and judgments of other countries, as well as private dispositions and agreements, shall not have

efficacy when they offend the national sovereignty, the public order and good customs.

Art. 18. In actions brought before the Brazilian tribunals the plaintiffs, nationals or foreigners, resident out of the country or who absent themselves from it during the suit, shall, when required by the defendant, give bond sufficient for the costs, if they have not in Brazil immovable property to secure their payment.

Art. 19. Foreign juridical persons are recognized.

Art. 20. Juridical persons of foreign public law cannot acquire or possess, by any title, immovable property in Brazil, or rights susceptible of disappropriation, except the lots necessary for the establishment of legations or consulates.

The by-laws or agreements (compromissos) of foreign juridical persons of private law depend upon the approval of the federal government, in order to operate in Brazil, by themselves or through branches, agencies or establishments which represent them; they are subject to the Brazilian laws and tribunals.

Art. 21. The national law of juridical persons determines their capacity.

GENERAL PART.

Art. 3. The law does not distinguish between nationals and foreigners in respect to the acquisition and enjoyment of civil rights.

Art. 9. Minority ends with 21 years completed, the individual being then habilitated for all acts of civil life.

Incapacity ceases for minors: I. By concession of the father, or, if he be dead, of the mother, and by sentence of the judge, after hearing the tutor, if the minor has completed 18 years. II. By marriage. III. By the exercise of an active, public employment. IV. By the bestowal of a scientific degree in a course of superior education. V. By a civil or commercial business established with his own means.

Art. 14. Juridical persons of internal public law are: the union; each one of its states and the federal district; each of the municipalities legally constituted.

Art. 15. Juridical persons of public law are civilly responsible for the acts of their representatives who, in that capacity, cause

damage to third persons by proceeding in a manner contrary to law or by failing in a duty prescribed by law, saving their right of action against the causers of the damage.

Art. 94. In bilateral acts the intentional silence of one of the parties in respect to a fact or quality of which the other party is ignorant constitutes a fraudulent omission (for which it may be annuled), it being proven that otherwise the contract would not have been made.

Art. 141. Except in expressed cases, proof exclusively by witnesses is only omitted in contracts the value of which does not exceed one conto de reis (about $225).

Art. 142. The following cannot be admitted as witnesses: insane persons of all kinds; blind and deaf persons when the knowledge of the fact to be proven depends upon the senses of which they are deprived; minors under 16 years; those interested in the object of the law suit, as well as ascendants and descendants, or collaterals, of any of the parties up to the third degree by consanguinity or affinity; spouses.

Art. 163. Juridical persons are subject to the effects of prescription and may invoke it whenever it favors them.

Art. 177. Personal actions prescribe ordinarily in 30 years, real actions in 10 years between parties present, and, between those absent, in 20 years, counting from the date in which action might have been brought. J. W.

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Consolidacao das leis da Justica Federal (consolidation of laws of the Federal Justice). First volume, by F. Faria.
Justicia Federal (federal law), by Kelly.
Agravos (crimes), by M. Carces.
Theoria Geral do Direito (general theory of law), by M. Garces.
Direito das Familias (domestic relations), by M. Garces.
Direito das Cousas (property rights), by Lacerda.
Banditismo (banditism), by Guamao.
A Cambial (the currency exchange), by Lacerdo.
Direito Administrativo (administrative law), by Viveiros de Castro.

Direito Público (public law), by Viveiros de Castro.
Práctica dos Inventarios (practical probate law), by Menezes.
Regimen Penitenciaria (penitentiary regulation), by Vianna.
Direito Penal Militar (military penal law), by Carpenter.

All the foregoing published by the Libraria Cruz Coutinho, Rio de Janeiro, 1914.

CHILE.

LEGISLATION.

1914.

Law No. 2889, approving an arbitration treaty between Chile and Italy, signed at Santiago, August 8, 1913. Law promulgated in the Diario Oficial, No. 10875, May 20, 1914, and published in the *Boletin de las Leyes,* book 83, 1914, p. 583.

Law No. 2890, approving a treaty for commercial traffic entered into between the government of Chile and of Bolivia. Law promulgated in the Diario Oficial, No. 10871, of May 15, 1914, and signed at Chile on the 6th of August, 1912, and published in the *Boletin de las Leyes,* book 83, 1914, p. 587.

Law No. 2846, on the administration and organization of the state railways. Promulgated in the Diario Oficial, No. 10875, January 29, 1914, and published in the *Boletin de las Leyes,* book 83, p. 19.

Law No. 2883, election law. Promulgated in the Diario Oficial, No. 10805, February 21, 1914, and published in the *Boletin de las Leyes,* book 83, 1914, p. 188.

The above law makes a complete reform of the election laws of the country and is a very lengthy and detailed law, consisting of 12 titles and 159 articles.

Law No. 2834, promulgated in the Diario Oficial, No. 10833, March 30, 1914, approved by the International Sanitary Convention, signed at Rome, December 9, 1907, organizing the International Office of Public Hygiene at Paris.

1915.

Election law, promulgated February 12; published in the Diario Oficial February 23.

Law of organization and powers of municipalities, promulgated January 28.

Law No. 2989, promulgated March 1, published March 5, imposes an export tax on boric acid and borates.

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Correa Bravo (Agustin): Comentarios y concordancias de la Ley de Organización y Atribuciones de las Municipalidades. 3a. edición, Santiago.

Errázuriz Ovalle (Ismael): Titulos de propiedad en el territorio indigena. Tesis de licenciado, Santiago.

Gotschlich H. (Bernardo): La moneda en relación con los sueldos, con las contribuciones y con las obligaciones en billetes de curso forzoso. Tesis de licenciado, Santiago.

Jorquera Villarroel (Pedro): Cónsules y Derecho Consular. Tesis de licenciado, Santiago.

Lazo (Santiago): Código de Minería. Origenes, concordancias, jurisprudencia, Santiago.

Lorca (José Antonio): Sobre patentes de invención. Tesis de licenciado, Santiago.

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Page (Arturo): Estudio sobre Política Internacional Americana. Tesis de licenciado, Santiago.

Ressetti B. (Luis Enrique): El matrimonio ante el Código Civil y con relación al Derecho Internacional Privado, Santiago.

Roldán (Alcibiades): Elementos de Derecho Constitutional, Santiago.

Tagle Ríos (Ismael): Ley de Organización y Atribuciones de las Municipalidades, Santiago.

Varas Montt (Antonio): Artículo 1° del Código Civil. Tesis de licenciado, Santiago.

Valdovinos (Carlos): El impuesto sobre las sucesiones. Tesis de licenciado, Santiago.

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Bernardino Toro Codesido: Projecto de Tratado de Derecho Internacional privado. Santiago, 1915.

Ley de Elecciones: Edicion Oficial. Santiago, 1915.

Ley de organizacion y atribuciones de las Municipalidades, promulgada el 22 de Diciembre de 1891 y reformado el 18 de Diciembre de 1914. Edicion Oficial. Santiago, 1915.

Recopilacion de leyes, reglamentos e instrucciones sobre la administracion en general y especiales de obras publicas. Santiago, 1914. P. J. E.

COLOMBIA.

LEGISLATION.

1915.

Law 41 (Diario Oficial, No. 15638, November 6), organic law of the national police.

Law 57 (November 15), Diario Oficial (No. 15646, November 17) on workmen's compensation for accidents.

The law defines an accident for which compensation is given as "an unforeseen and sudden event occurring by reason of and occasioned by the employment and producing in one performing work for account of another, a wound or permanent or temporary functional disturbance, all without fault on the part of the workman. Compensation is limited to those receiving not more than $6 a week. The indemnities are small. The law applies only to certain classes of industry (article 10). Recourse is had to the courts to obtain the indemnity (article 12 *seq.*).

The law is very limited and fails far short of the progressive legislation adopted in some other Latin American countries; but it marks a useful beginning and is evidently intended (article 18) as preparatory merely for improved legislation.

JURISPRUDENCE.

In the majority and dissenting opinions of the Supreme Court of Panama, in the case of Muller, attorney for Pearman, *vs.* Wood (see this Bulletin, Panama), and other cases, there is a very valuable discussion as to the mining laws of Colombia and the Spanish colonies.

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"La legislación hipotecaria en Colombia comparada con varias legislaciones hispano-americanas" por Dr. Federico Garavito A in Revista de Derecho y Legislación (Caracas, Venezuela) for year 1915.

A valuable comparative law study.

Miguel, Moreno J.: Colombia Constitucional. Apuntes de Derecho Constitucional. Introducción del Dr. Carlos E. Restrepo, ex-Presidente de Colombia. Medellin, 1915.

A useful edition of the constitution, preceded by a brief but thoughtful commentary, based on more ambitious works, chiefly foreign. The recent law on administrative courts and one or two other laws are added.

Eduardo Rodriguez Piñeres (editor): Código Colombiano de Comercio Terrestre y leyes vigentes que lo adicionan y reforman.

An edition of the Commercial Code on the same lines as the other codes edited by this indefatigable jurist. It does not, however, contain all the supplemental material to be found in the earlier editions of the code by Robles and Antonio José Uribe, which still continue indispensable to the practitioner.

Eduardo Rodriguez Piñeres (ed.): Codigo Militar Colombiano y Leyes Vigentes que lo adicionan y reforman. Bogotá, 1915.

A much needed edition of the Military Code.

Manuel Alberto Alvarado: Responsabilidad Penal. Bogotá, 1915.

Julian Restrepo-Hernandez: Derecho Internacional Privado, 624 pp. Bogotá, 1914.

One of the most scientific and practical legal treatises yet published in Colombia. A detailed study of the rules of private international law in force in Colombia, in the light of the chief European authorities, whose conflicting theories are ably summarized. P. J. E.

COSTA RICA.

LEGISLATION.

Legislative Decree No. 2, March 29, 1915, decrees that a number of decrees issued by the Executive from August, 1914, to March 15, 1915, both inclusive, have been issued pursuant to the powers conferred on the Executive by Congress by Decree No. 60 of August 8, 1914, and have full legal force and effect.

Among the 1915 decrees so ratified are:

No. 1 of March 4, 1915, law of commercial insurance and insurance companies (an extensive law on the subject).

No. 1 of March 5, 1915, on offenses against mines and metals.

Executive Decree No. 43, February 4, 1915.

Regulations as to general storage warehouses: covers warehouse receipts and warrants.

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Coleccion de Leyes y Decretos, Anó 1914. 2 volumes. 1°, Primer Semestre, San José. 2°, Segundo Semestre, n. d. (1914, 1915). P. J. E.

CUBA.

BIBLIOGRAPHY.

Disposiciones Vigentes para la adquisicion de la Propiedad Minera y la explotacion de sus Riquezas (edicion oficial). Habana, 1915, includes the very important new decree (No. 1076 of September 28, 1914), the organic regulations on mining and the old basic law of 1868.

Augustine P. Barranco, of the New York Bar, formerly Chancellor of the Cuban Legislation at Washington, had a brief article ("Cuban Law—A Few Points of Interest") in the *Cuba Review*, pp. 11-13.

Fernando Ortiz: La Filosofia Penal de los Espiritistas. Habana, 1915.

Secretaria de Justicia. Memoria de Estadistica Judicial. Quinquenio del 1909 al 1913. Habana, 1915. 4°, pp. X, 279.

Important publication, especially in reference to criminal statistics. Crime is proportionally more prevalent among those knowing how to read and write than among the illiterate—female delinquency is rare: delinquency is proportionally less frequent among native Cubans than foreigners, among whites than negroes. On the civil side, the most notable feature is the enormous number 1913, increasing, according to the preface, to 22,500 for 1914. Very few, however, are carried to final stage of eviction: the proceedings being in effect a very effective means for collection of rents. P. J. E.

ECUADOR.

LEGISLATION.

1914.

Law promulgated September 15, 1914 (Registro Oficial No. 608) amends the trademark law of October, 1908.

Law promulgated October 24, 1914 (Registro Oficial No. 640) amends the Mining Code in a few minor particulars. Exemption from all taxation, other than the patent fee, includ-

ing exemption from customs duties for machinery, tools and explosives, is granted for a period of 20 years.

Law promulgated October 31, 1914 (Registro Oficial No. 646). Organic law creating a bureau of National Statistics and Civil Register.

Legislative decree promulgated October 8, 1914 (Registro Oficial No. 627) ratifies the Montevideo International Convention for Agricultural Defense of May 10, 1913.

Legislative decree promulgated October 10, 1914 (Registro Oficial No. 628) ratifies the International Sanitary Convention signed at Paris, January, 1912.

Legislative decree promulgated October 15, 1914 (Registro Oficial No. 632) ratifies with reservations the 15 conventions signed at the second Hague Peace Conference in 1907.

1915.

The Senate has approved the bill amending the *Code of Procedure* and the law providing for the election of senators and deputies during the month of May.

Congress has enacted a law providing for the government monopoly of *aguardiente and tobacco,* and authorizing the executive power to place the sale of the same, through competitive bids, into the hands of some bank or commercial institution of the country. The law specifies that the proceeds of the monopoly shall be used for the payment of debts to banks, refund to be made at the rate of not more than 2,000,000 sucres (sucre—$0.4867) per annum for the first year, and 3,000,000 sucres for the succeeding years.

Congress has made October 12 of each year, the date of the discovery of America by Columbus, a *national holiday.*

Congress has enacted a law authorizing banks which have completed their issue of *bank notes* in accordance with article 5 of the banking law to place same in circulation, provided they have on hand in gold coin one-half the value of the bank notes thus issued.

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MEXICO.

Owing to the extra-constitutional conditions prevailing for several years in the Republic of Mexico, there is nothing which can be termed "legislation" reported from that country. The publication of the Diario Oficial, of Mexico, which carried the official publication of the laws, has long since been suspended, and no general Congress has been in session since the one which was turned out and imprisoned by the armed forces of Huerta.

There have, of course, been a number of "official decrees" issued by the "First Chief of the Constitutionalist Army in charge of the executive power of the nation," V. Carranza, purporting to enact laws, and to amend the Federal Constitution and the Civil Code of Mexico. Such decrees are contrary to the express letter of the constitution, and thus will probably be considered invalid upon the restoration of the constitutional order in Mexico. It is doubtful whether any of these military ukases has any value as contribution to a study of comparative legislation.

Several of these decrees, however, may be mentioned for the purpose of indicating the sweeping nature of the so-called reforms sought to be instituted by the constitutionalist régime.

A decree of December 25, 1914, amends the constitution, art. 109, so as to abolish the famous institution of the "Jefe Político," provided:

"Art. 109. The states shall adopt for their interior régimen the republican, representative, popular form of government, having as the basis of their territorial division and of their political organization, the free municipality (municipio), administered by town councils (ayuntamientos) of direct popular election, and without intermediate authorities between them and the government of the state.

"The executive and the governors of the states shall have control of the public forces of the municipalities where they habitually or temporarily reside.

"The governors cannot be reelected nor continue in their office for a period greater than six years. By a decree of December 29, 1914, sec. IX of art. 23 of the law of December 14, 1874, reglamentary of the additions and reforms of the Federal Constitution decreed December 25, 1873, is admitted so as to provide for absolute divorce, which has never existed heretofore in Mexico, and provides very liberal grounds for such divorce.

"Sec. IX. The bonds of matrimony can be dissolved either by the mutual and free consent of the parties thereto when the

marriage has endured for more than three years, and at any time for causes which render impossible or improper the realization of any of its purposes or where the conjugal disagreement is irreparable. Upon the dissolution of the marriage, the parties may contract a new legitimate union.

"Art. 2. Pending the reestablishment of the constitutional order in the Republic, the governors of the states are authorized to make the necessary modifications in the respective Civil Codes so that this law may be applied."

A decree of January 29, 1915, amends art. 72 of the Federal Constitution by adding a paragraph authorizing the Federal Congress:

"X. To legislate throughout the Republic in regard to mining, commerce, institutions of credit and labor."

A decree of March 22, 1915, purporting to be based upon art. 5 of the Federal Constitution, which provides that "no one can be obliged to render personal services without his full consent, and without just compensation, increases by 35 per cent the daily wages then paid to laborers in cotton, wool, jute and henequen factories, and by 40 per cent the wages paid in such factories for job work.

"Art. 2. This increase of compensation shall continue until bases shall be established fixing the minimum wages or salary for compensation of personal work, which shall prevail throughout the Republic." J. W.

NICARAGUA.

LEGISLATION.

1915.

1. *Law of Moratorium.*—On February 25, 1915, Congress enacted a law providing for the extension for six months of the law of October, 1914, establishing a moratorium in favor of debtors whose obligations may be due or may become due during that term. W. S. P.

PANAMA.

LEGISLATION.

1914-1915.

1. *Consular Service.*—Law No. 39, of December 24, 1914, provides for and lays down rules concerning the consular service, which is divided into consuls general, consuls, vice consuls and consular agents.

2. *Tax on Business Houses.*—Law No. 51, of December 29, 1914, authorizes the municipalities of the Republic to place a monthly tax of not less than a balboa on establishments where foreign merchandise is sold at retail.
3. *Division of Province of Los Santos.*—Law No. 55, of December 30, 1914, divides the Province of Los Santos into two parts; one to retain the name of Los Santos and the other to be given that of Azuero.
4. *Petroleum.*—Law No. 6, of January 9, 1915, provides in regard to the exploitation of oil springs or deposits, which the nation reserves to itself, provided they have not been legitimately acquired by individuals. But the Republic may enter into contracts for 10 years with individuals or companies to exploit. This act was amended by Law No. 38, of February 20, 1915.
5. *Arbitration Treaty with Brazil.*—Law No. 12, of January 15, 1915, approves the treaty of arbitration between Brazil and Panama, which was signed in Washington May 1, 1909.
6. *Sanitary Convention.*—Law No. 33, of February 11, 1915, approves the Sanitary Convention signed in Paris January 17, 1912.
7. *Commercial Tax on Foreign Merchandise.*—Law No. 39, of February 24, 1915, provides for the imposition of a commercial tax on foreign merchandise or articles of commerce which may be imported for sale or consumption in the Republic.

W. S. P.

RULES OF COURT.

January 6, 1915, rules of the Supreme Court were adopted, published in Registro Judicial, Vol. XII, No. 7, February 4, 1915.

JURISPRUDENCE.

In the case of Colunge *vs.* Villareal *et al.* (Supreme Court, June 12, 1915), Registro Judicial, Vol. XII, No. 69, August 5, 1915.

Held that the statement in a deed of receipt of the purchase price consideration could be contradicted.

Order of the Supreme Court on petition of Panama Railroad Co., September 4, 1915 (Registro Judicial, October 5, 1915, Vol.

XII, No. 100) *holds* that to entitle a deed executed in a foreign country by one corporation to another to be recorded, it was not necessary that the certificate of incorporation or article of association be filed in Panama; but proof of authority of the officer executing on behalf of the corporation is requisite; also all parties to act must sign names in full.

Muller, as attorney of Pearman, *vs.* Woods, Supreme Court, January 15, 1915 (Registro Judicial, Vol. XII, No. 6, January 30, 1915), *held* in the lower court:

The ownership of unexploited petroleum deposits on privately owned lands which at the time of the independence of Panama and under the Colombian laws, belonged to the owner of the soil, was not affected by the provision of art. 115, subdivision 4 of the Constitution of Panama, which declares quartz and placer mines and *other mines* of whatsoever nature belong to the nation, without prejudice to vested rights. The ownership of such mines was a vested right of the landowners and they cannot be acquired by denouncement under the mining laws. The decision was upheld on appeal, overruling previous dicta to the contrary.

The decision was followed in the cases of Pearman *vs.* Alford, January 30, 1915, Registro Judicial, Vol. XII, No. 8, February 6, 1915; Pearman *vs.* Slugis and Pearman *vs.* Viglio, January 23, 1915, Vol. XII, No. 28 (April 14, 1915), and other cases.

NEW CODES.

Drafts of revised civil, administrative and mining codes have been prepared; very substantial changes are proposed.

Reports of Supreme Court thereon are to be found in various numbers of the Registro Judicial from August, 1915, on.

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Informe que presenta la Comision de Legislacion Uniforme de la Republica de Panama al Secretario General, en Washington. Panama, 1915.

Report of the Panama Committee on Uniform Laws appointed as a result of the Pan-American Financial Conference. Includes the monetary law, the titles of the commercial codes referring to negotiable instruments and bills of lading, the new Tariff Act and one or two other laws and decrees. P. J. E.

PARAGUAY.

LEGISLATION.

1914.

Law No. 69, April 27, 1914, makes Columbus Day (October 12) a legal holiday.

Law No. 93, August 24, a new mining law, of 225 articles, divided into 20 titles, as follows:

I. *Of the Ownership of Mines.* Mines belong to the state, to be exploited under the code, with the exception of calcareous and clay deposits and building materials, which belong to the owner of the soil (arts. 2, 3, 5). II. *Persons Who May Acquire Mines.* All persons capable of owning realty can acquire mines, except enunciated public officials intervening in mining matters, or their wives and children (arts. 12-16). III. *Prospecting and Development.* Open to all, under official permit, under reasonable requirements, even in private property, except cultivated lands or within a certain distance from improvements or public places (arts. 17-31). IV. *Of Mining Concessions.* A claim is 300 x 200 meters, of unlimited vertical depth. Five claims only, or, in the case of coal or other fuel, 10 claims can be granted to one patentee (art. 36). V. *Of Discovery.* VI. *Denouncements of Forfeited Mines.* VII. *Judicial Delimitations.* VIII. *Of the Rights of the Mines and Trespasses.* IX. *Waiving of Mines.* X. *Tunnelling Works.* XI. *Mining Servitudes.* XII. *Forfeiture of Concessions.* XIII. *Special Mining Loans (Avios).* XIV. *Mining Companies.* XV. *Transfer of Mines and Sale of Ores.* XVI. *Leases of Mines.* XVII. *Labor Contracts.* XVIII. *Taxes and Fees.* XIX. *Suits.* XX. *Miscellaneous Provisions.*

Law No. 70, May 7, ratifies extradition treaty with Germany, signed at Asunción, November 26, 1909.

Law No. 77, June 18, ratifies the agreement extending for five years the arbitration treaty of 1909 with the United States.

Law No. 83, June 20, ratifies the convention additional to the extradition treaty with Great Britain, signed at Asunción, July 16, 1913.

Law No. 84, June 20, authorizes the Executive to adhere to the Permanent International South American Railway Congress.

Law No. 96, September 25, authorizes the Executive to found a state bank to be known as the "Banco de la República."

Law No. 97, September 24 (*sic*) on Coastwise Navigation and Commerce.

Law No. 106, December 11, moratorium.

Law No. 58, January 17, regulates the civil registry of persons. Births, deaths, marriages and recognition and legitimation of children are inscribed in the civil registry. The law also contains sundry provisions as to burial.

Law No. 78, June 18, amends in important particulars a great many chapters of the Penal Code.

Law No. 85, July 23, creates civil and commercial contract registry offices. P. J. E.

PORTO RICO.

LEGISLATION.

1915.

Laws passed at the first session, all approved March 11, 1915, worthy of mention are:

Act No. 4, conferring upon women eligibility to become members of school boards.

Act No. 8 amends section 92 of the Code of Civil Procedure in regard to the service of summons.

Act No. 11 requires admission to the Bar by the Supreme Court of Porto Rico, and residence in Porto Rico for a period not less than two years as qualifications for eligibility to the office of municipal judge in municipalities of Class I and II.

Act No. 17 regulates costs and fees in the district and municipal courts.

Act No. 19, amending the acts as to civil register and cemeteries.

Act No. 20, granting to former owners, heirs or assigns of real property sold for taxes subsequent to July 1, 1901, and bid in and possessed by the people of Porto Rico, or to any one interested therein, the right to redeem said property within one year from the date (July 1, 1915) the act takes effect, upon payment of the price for which it was held in, the amount expended for improvements and interest. Property

is redeemed subject to outstanding leases and all liens and legal claims other than the tax liens for which it was sold.

Act No. 23 amends Article 126 of the Law of Waters.

Act No. 25 designates the second Sunday of May as Mothers' Day, to be devoted to the exaltation of motherly affection and its unbounded self-denial, thus tending to develop in the hearts of children that holy respect and undying love which they should feel for the woman that gave them life. The governor shall duly publish a proclamation for the celebration of the day and indicate that the honeysuckle be worn by the inhabitants of Porto Rico as an emblematic flower.

Act No. 31, to protect Porto Rican cigars from fraudulent misrepresentation by providing for expert inspection and the issue of stamps of guarantee. Counterfeiting the stamps is made criminal.

Act No. 33 adds a new section (142A) to the Code of Civil Procedure, providing for the mailing by the secretary of a notice to the losing party or attorney of decision of motion to strike out or demurrer.

Act No. 35 provides for the sale to laborers of public lands, to be selected by the Commissioner of the Interior, for dwelling and farming purposes. Persons applying must be citizens of Porto Rico or of the United States, over 21 and less than 50 years of age, married or a widower or bachelor, legally reponsible for the support of a legitimate family, a bona fide laborer with an income not exceeding $500 and without other property exceeding $300, able bodied and of good character. A bipartisan Homestead Commission is appointed with consultative and advisory and certain specified duties. The sale is subject to prescribed conditions: in the case of two lots, ownership of a house with not less than $50 on the lot, within 12 months, payment annually of 10 per cent of the appraised value, residence thereon for five years; in the case of farm lands, requirements for minimum cultivation and like annual payments and residence. The homesteads created are free from attachment, mortgage or other encumbrance except taxes.

Act No. 37 establishes a system of juvenile courts, provides for the care of neglected and delinquent children and for the disposition of cases of juvenile delinquency. P. J. E.

SALVADOR.

LEGISLATION.

1915.

1. *Law Concerning Stamps and Stamped Paper.*—On June 1, 1915, a law was passed providing the fees to be charged for stamped paper used for acts, contracts and public documents, authenticated and private.
2. *Income Tax Law.*—On June 15, 1915, a law was enacted imposing an income tax on all natives, Central Americans and foreigners enjoying an income in the country. Persons whose liquid income does not exceed 2000 pesos are exempt.
3. *Treaty of Commerce with Honduras.*—On June 26, 1915, the representatives of Honduras and Salvador signed a treaty of commerce at Tegucigalpa. W. S. P.

SANTO DOMINGO.

CONSTITUTION AND GOVERNMENT.

Outlined in Annual Bulletin July 1, 1914.

LEGISLATION.

Civil Code, adopted April 17, 1884. Follows the general lines of the Civil Code of Spain.

Code of Civil Procedure, adopted November 24, 1900.

Commercial Code, adopted November 24, 1900.

Penal Code, adopted August 20, 1884.

Code of Criminal Procedure, adopted June 27, 1884.

Code of Military Penal Law and Procedure, adopted August 26, 1884.

Law of National Statistics, adopted May 28, 1909.

Law of Banking Institutions, adopted November 15, 1909.

Law and Regulations Regarding Mines, adopted June 27, 1910.

Law and Decree Regarding Stamps, adopted July 23, 1910.

Law Regarding Custom Houses and Ports, adopted November 20, 1909.

Law Governing Tariffs on Imports and Exports, adopted November 23, 1909.

Law Governing Patents, adopted April 26, 1911.

Law Governing Franchises, adopted June 26, 1911.

Various laws governing procedure in cassation division of common lands, political crimes, correction of records of the civil status and amendments of the Commercial and Penal Codes, adopted in 1911.

Tariff Governing Lighterage for the Embarkation and Disembarkation of Goods on Government Wharves, adopted August 12, 1911.

Law and Tariff Governing the Use of Government Wharves. Law adopted June 26, 1911.

Collection of Laws, Decrees and Resolutions issued by the legislative and executive powers of the Dominican Republic, containing also the Proclamation of Independence from Haiti, published officially July 2, 1900. R. J. K.

URUGUAY.

LEGISLATION.

1915.

Diario Oficial No. 2721 (January 7), Law approving the International Opium Convention signed at The Hague.

Diario Oficial No. 2722 (January 8), Law on Fisheries in Territorial Waters; amends law of July 20, 1900.

Diario Oficial No. 2730 (January 18), Law on Military Defense.

Diario Oficial No. 2763 (March 2), circulating false reports affecting public credit or the credit of private credit institutions is made a criminal offence.

Diario Oficial No. 2820 (May 15), on Elections for Constitutional Convention.

Diario Oficial No. 2821 (May 17), on Illegitimate Children and Recognition by their Parents.

Diario Oficial No. 2838 (June 9), amending article 158 of the Commercial Code as to clerks and employees—a discharged

employee is given a right to receive indemnity for discharge (unless for notoriously bad conduct or attempts at crime) amounting to one month's salary for every two years he has been in the employer's service. Provision is also made for notice, resignation, cases of discharge for participating in strikes; payment of similar indemnities to widows, minor heirs or unmarried daughters, in case of the death of the employee; and insurance by the employer, in industrial establishments, to guarantee the indemnity (see last year's Bulletin, p. 123).

Law of July 1, 1915 (Diario Oficial, July 7, 1915, No. 2861), prescribes the court vacations as July 10 to July 31 and December 25 to January 25.

Law of July 12, 1915 (Diario Oficial, July 13, No. 2866), makes July 14 and October 12, the anniversaries of the taking of the Bastile and the discovery of America, legal holidays.

Law of July 12, 1915 (Diario Oficial, July 16, 1915, No. 2868), creates a mortgage tax to be held by the creditor varying according to the rate of interest from 50 cents to $2.75 on each $100. Certain mortgages, including those from less than $1000, and amortization mortgages where the term is five years or longer are exempt.

Law of October 22, 1915 (Diario Oficial, October 26, 1915, No. 2952), in relation to the Banco Hipotecario del Uruguay (Mortgage Bank of Uruguay), which was taken over by the state in 1912.

The issue of mortgage certificates or bonds is declared the exclusive privilege of the state, to be exercised through the bank. Private individuals and companies can, however, issue mortgage obligation to guarantee their own indebtedness.

Mortgage certificates issued by the bank are guaranteed by the nation. The law is important and well worthy of a more detailed study than the scope of these notes permits.

Law of November 17, 1915 (Diario Oficial, November 19, No. 2971), imposes an eight-hour labor law.

Law of December 14, 1915 (Diario Oficial, December 16, 1915, No. 2993), approves the Treaty *Pro Paz* signed at Montevideo, February 27, 1915, with Chile.

Law of December 16, 1915 (Diario Oficial, December 30, No. 3004), reorganizes the postal, telegraph and telephone services. The law establishes a state monopoly, without prejudice, however, to vested rights.

DECREES.

Decree of June 25, 1915 (Diario Oficial, June 28, 1915, No. 2854), regulates the law of July 21, 1914, on prevention of accidents to laborers in mines, factories, etc.

Decree of June 25, 1915 (Diario Oficial, June 28, 1915, No. 2854), regulates the law of July 21, 1914, in relation to prevention of railroad accidents.

Decree of July 17, 1915 (Diario Oficial, July 22, 1915, No. 2873), regulates packing houses, slaughter-houses, etc., making them subject to the official Health Inspection Board.

Decree of July 20, 1915 (Diario Oficial, July 22, 1915, No. 2873), regulations on mortgage tax law of July 12, 1915.

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Dr. Alejandro Legarmilla: Estudios sobre el Código de Procedimiento Civil del Uruguay, Montevideo, 1915.

" Gobierno y Responsabilidad "—a series of important articles on Comparative Public Law, by J. E. Jimenez de Arechaga in the *Revista de Derecho y Ciencias Sociales* for year 1915.

P. J. E.

VENEZUELA.

LEGISLATION.

Gaceta Oficial No. 12429 (January 9) Decree Regulating Pearl Fisheries.

Gaceta Oficial No. 12549 (June 2) Decree Regulating Traffic on Highways.

Gaceta Oficial No. 12560 (June 15) Law Authorizing Bond Issue of 3,000,000 Bolivares, pursuant to the Venevuelan-French protocol of 1913.

In June a number of very important laws were passed, in many respects completely amending the legal and administrative systems of Venezuela. These are to be found in the Gaceta Oficial, beginning with No. 12562, June 17, onward. Among the most important are: Law of Missions; Organic Law of the Courts of the Federal District; Organic Code of the Federal Courts and of Cassation and of other Courts; Law of Public Credit; a number of Revenue Laws; Law of the Executive Departments; a number of Laws on Education; new Land and Mining Laws (Gaceta Oficial, August 3, 1915, and September 2 and 4), and a new Penal Code (Gaceta Oficial, August 19). P. J. E.

2. Europe.

BELGIUM.

Leon Theodor, bâtonnier of the Association of the Bar of Brussels, has recently been released from imprisonment in Germany, after successful mediation instituted through the joint efforts of the organizations of the Bar of Belgium, France and Italy.

The activities of M. Theodor and, in fact, of the Belgian Bar generally, during the past year, serve to emphasize the traditions of the Bar throughout the ages in maintaining the constitutional liberties of the people. Early in the period of the German occupation of Belgium he, with several other leading members of the Brussels Bar, took active steps in protesting against what he and his colleagues deemed the unnecessary interference by the military with the regular and orderly progress of the Belgian civil tribunals.

Without entering into an account of his activities in detail, which finally led to the imprisonment from which he has just recently been released, it may be of interest to the members of the Bar in this country to have an abstract of the memorial presented by him in April, 1915, to the German Governor-General of Belgium, protesting against the organization and continuance of extraordinary tribunals throughout Belgium.

"Such a condition," reads the memorial, "represents justice in name without any control whatever. The judge thus becomes responsible to himself alone, subject only to his own opinions, prejudices and environment. Under such circumstances, the accused is abandoned in all his distress to the measures of an all-powerful adversary. Justice such as this, without control and therefore without guarantee, constitutes for us the most dangerous and oppressive of all illegalities. We cannot conceive of justice in any legal or moral sense without full opportunity for defense. It may be urged that we live under martial law; that we must submit to the harsh necessities of war; that all must bow before the superior interest of your armies. We realize the necessity of martial law for armies in the field as an immediate preventive of any aggression against your troops; we understand it as repression without parley, a summary justice enforced by the chief of an army responsible for his soldiers. But our armies are far away. We are no longer in the zone of military operations. Nothing here menaces your troops and the population is calm. The people have taken up their work in accordance with your own urgent request. Everyone is devoting himself to his respective duties; judges, provincial and communal magistrates, the clergy, all are at their posts, admirable in the fulfilment of their civic duties, united in one common essay of national solidarity and fraternity."

The memorial concludes with a petition to the Governor-General to recognize that the hour has arrived "to repress all extraordinary measures by the régime defined by The Hague Convention and thus to give back to the Palace of Justice at Brussels a character of dignity impossible under the present guard-room atmosphere, which the presence of German soldiers has lent to it since the month of August, 1914." A. K. K.

FRANCE.

A JUDICIAL SALE IN LOUISIANA IN 1760.

The translation which follows from the French of an act or deed of judicial sale made in New Orleans in 1760 may be interesting to both lawyer and layman. It may interest the layman by giving some features of a Louisiana plantation a few years after settlement of the province. The lawyer will find it a curiosity in procedure, a procedure not now in force in Louisiana.

A judicial sale, says Pothier, is one made by the judge in open court, or at auction by an official of the court, in various cases, such as a licitation, where some or all of the co-heirs or co-proprietors are minors, or where parties require it.

These sales were pure and simple, or they were made under the condition that no higher bidder should intervene, and these latter were called *adjudications sauf, i. e.,* "adjudications saving."

Decrees of pure and simple adjudication had to be preceded by three continuances or "adjudications saving 15 days"; that is to say, adjudications made under the condition that no higher bidder should appear during the fortnight.

These sales were contracted under the suspensive condition: so that they were not executory until the happening of the condition, the dominion adjudicated not being transferred, nor the adjudicatee being put in possession; and he was not, during the interim, obliged to pay the price.

If higher bidders appeared, and the adjudicatee "saving the fortnight" having outbid them, still was the adjudicatee, the first adjudication was held to have been destroyed, *defectu conditione,* by the latter bids, and the adjudicatee to be the purchaser and owner by virtue of his last bid.

When at another outcry the property was adjudicated to him, to whom it had been adjudicated saving the fortnight, for lack of a higher bidder, the new adjudication was held to be merely a confirmation of the first, and by that ownership was acquired.

On the day to which the auction was postponed, if there appeared no higher bidder, the person provoking the sale could obtain from the judge a new continuance; to this the adjudicatee could not object, but he could ask to be relieved of his bid.

A trace of this practice remains in the French Civil Code, which permits, in sales of minors' property and of real estate under seizure, the reception of a further bid within a delay of eight days after adjudication, provided such bid be not less than a sixth of the appraisement.

The rules of the *addictio in diem* of the Roman Law were somewhat different. It was sufficient for the first buyer to offer as much as the highest bidder at the second outcry to be preferred. The condition appears to have been resolutory. If no higher bidder intervened in the second outcry, there was no need of a

new adjudication; the first was confirmed of right, and the seller could not legally sell to one offering more.

The adjudication *saving* being a sale under the suspensive condition, the thing remained at the risk of the adjudicatee; the adjudication was dissolved of right by a higher bid accepted by the judge, even if the higher bidder should fail to pay, but not if the accepted higher bid were null for want of form or of capacity of the party.

In the Louisiana sale given below several words are used familiar to Louisianians, but probably not familiar to others, such as "homologate," "arpent," "family meeting," "pound" (*livre*).

Homologation is the formal judicial approval of some ancilliary legal proceeding had in the main proceeding.

An arpent is an old French lineal measure comprising 30 toises of six feet each of the City of Paris, say about 192 feet; a superficial arpent is, roughly speaking, 85/100 of an acre.

An ancient French pound may be said to be approximately the equivalent of a franc, say, 20 or 25 cents.

A family meeting is an assembly of the relations of a minor, or of friends in default of relations, convoked judicially to give their advice and recommendation touching certain matters of the minor referred to it. J. F. C. W.

"The year seventeen hundred and sixty, and the sixth day of the month of August, at three o'clock in the afternoon, upon the petition of Mr. Fuselier de la Claire, in the name and as testamentary executor of the deceased Mr. Delfant de Pontalba, in his life-time captain of infantry of this colony, and tutor of the minor children of said deceased, according to his will and the advice of the relations and friends of said minors, homologated by the court the fourteenth of July last, and in execution of our decree of the twenty-third of said month, made at the bottom of the said petition; We, Vincent Gaspard Pierre Bochemore, Knight Councillor of the King in his councils, commissioner general of the navy, orderer and first magistrate in the province of Louisiana, accompanied by Mr. Jean Baptiste Raguet, councillor of the supreme council of this province, there acting as the king's attorney general, the clerk and usher of said council, having appeared in person at the Bar of the court for the purpose of receiving the first outcries and bids for a certain piece of land and plantation belonging to the succession of said deceased Delfant de

Pontalba, where, seeing the proces-verbal of the publications and public placards at all usual and customary places in this city of New Orleans made by Le Normand, usher, under date of the twenty-seventh of said month of July last, and there being a number of bidders, we caused to be published and proclaimed, in a loud and intelligible voice by the usher crier, that we would presently proceed, for the first time and the first auction, to the sale and adjudication, to the highest and last bidder, of a piece of land and plantation belonging to the succession of the deceased Mr. Delfant de Pontalba, situated at about one league above and on the same side as this city, going up the river, adjoining on one side the plantation of the succession of the deceased Mr. Delino, and on the other that of Mr. Caminada; the said land having eleven and one-half arpents front by the depth and point of compass it runs to, which plantation formed formerly an angle of two equal sides, of which the basis, fronting on the river, had twenty-two arpents front by eighty in depth, but Mr. Broutin, to whom it belonged, having sold to Mr. Delino the quantity of ten and a half arpents front by forty arpents only in depth, and between parallel lines, the overplus of said angle forms, consequently, the superficies of said land and plantation which is now to be sold, on which are constructed a main house, a kitchen, a store, a dry-house, a pigeon house, a chicken house, seven negro cabins, seven tubs for the manufactory of indigo, with the yard, garden and enclosure, together with the whole crop, that is actually hanging by the root, appurtenances and dependencies, without reserve or withhold, and in the condition in which the whole now is; the said sale and adjudication under the obligations, clauses, and conditions on the part of the highest bidder to pay the price of his adjudication in ready money, and before being put in possession, with all costs incurred; and as Mr. Livaudais, the son, has bound himself by a bargain made under private signature between him and the deceased De Pontalba, to make and complete on said plantation two pigeon houses for the sum of two thousand pounds, on account of which he has already received from said deceased one thousand pounds, it is covenanted and agreed that the highest bidder for said plantation, accepting the said bargain at his risk, in consequence will pay, besides the price of his adjudication, the said sum of one thousand pounds to the said Mr. Livaudais, as soon as he shall have delivered the said pigeon houses made and completed agreeably to said bargain, a compared copy of which will be delivered to him; according to which bargain the rubbish and materials of the old pigeon house, which is actually on said plantation, belong to said Mr. Livaudais. All which said conditions having been read and explained several times in a loud and intelligible voice by the usher crier, Mr. Caminada being present, bid for the said land, plantation, appur-

tenances and dependencies, above described, the sum of twelve thousand pounds, which bid was raised by Mr. Laforcade to thirteen thousand pounds; by Mr. Arnoult to fourteen thousand pounds; by Mr. Pictet to fourteen thousand five hundred pounds; by Mr. Thomassin to fifteen thousand pounds; and after having waited till the hour of five o'clock, without any other bidder presenting himself to cover said bid, by the consent of the said King's attorney general and the said Fuselier de la Claire, in his capacity, we, commissioner general of the navy, orderer of this province, aforenamed and undersigned, did decree and do order, that new publication be made and affixed at all usual and customary places in this city, Sunday next, tenth of said present month, to have new outcry, and bids, on the twentieth day of the same month, at three o'clock in the afternoon, on which day all persons will be admitted to cover said bid, according to the above clauses and conditions, at New Orleans, the said day, month and year, and we have signed.

(Signed) FUSELIER DE LA CLAIRE,
ROCHEMORE,
RAGUET."

"And on the said day, the twentieth day of August, by virtue of our decree, at three o'clock in the afternoon, we, the commissioner general of the navy, orderer and first magistrate in this province aforesaid undersigned, accompanied by said King's attorney general, the clerk and usher of the council, appeared in person at the Bar of the court for the purpose of receiving the second outcries and bids on said land and plantation, where, having seen the proces verbal of the publications and public placards, in all usual and customary places in this city, made by the usher, Le Normand, under date of the tenth of the present month, and after having waited till the hour of five without any bidder having presented himself to cover the last bid of the sum of fifteen thousand pounds, made by Mr. Thomassin, by consent of the King's attorney general, and said Mr. Fuselier de la Claire, in his capacity, we did decree and do order that new placards be published and posted up at the usual and customary places in this city, Sunday next, the twenty-fourth day of the present month, to get new outcries and bids, the third of September next, at three o'clock in the afternoon, on which day all persons will be admitted to cover the above-mentioned bid, under the clauses and conditions aforesaid.

"At New Orleans, the day, month and year as above, and we have signed.

(Signed) FUSELIER DE LA CLAIRE,
RAGUET,
ROCHEMORE."

"And the third of September of said year, at three o'clock in the afternoon, by virtue of our decree of the 20th of August last, we, commissioner general of the navy, orderer and first magistrate of this province, accompanied by the King's attorney general, the clerk and usher of the council, transported ourselves to the Bar of the court, for the purpose of proceeding definitively to the third outcry of the sale and adjudication of the aforesaid land and plantation, where, having seen the process verbal of the publications and placards published and posted by Le Normand, usher, at all the customary places in the city, under date of 24th of August last; and after having waited until five o'clock without any bidder having presented himself, to cover the last bid of the sum of 15,000 pounds made by Mr. Thomassin, by consent of the King's attorney general, and said Fuselier de la Claire in his quality, we have decreed and do order that new placards be published and posted up in all usual and customary places in this city, Sunday next, seventh of said month, at three o'clock in the afternoon, on which day we will proceed definitively, and for the fourth and last outcry, to the sale and adjudication to the last and highest bidder for the said land and plantation, and when all persons will be received to cover said bid under the said clauses and conditions.

"At New Orleans, the day, month and year as above, and we have signed.

(Signed) FUSELIER DE LA CLAIRE,
RAGUET,
ROCHEMORE."

"And said sixteenth of September, in the said year 1760, at 3 o'clock in the afternoon, by virtue of our decree of the third of the present month, and also in execution of the decree of the supreme council of this province, rendered on the sixth of the present month, decreeing that, in order to put an end to all unnecessary proceedings, the demands and oppositions of Mr. De La Ronde, and all other opponents to the sale of the movables and immovables of the succession of the deceased de Pontalba should be rejected, and prohibiting them from making others; and, in consequence, ordering Mr. Fuselier de la Claire, in his quality, to proceed immediately with said sale, inasmuch as already some of the negroes are sick, whose sickness might become serious, and prejudicial to the minors, to place the funds accruing therefrom to the best advantage, the rents which are drawn therefrom not being sufficient for their maintenance; and, besides, that such is the intention of the said deceased, mentioned in his will, which has been duly and legally approved and homologated the 14th of July last, upon the advice and recommendation of a family meeting of the relations and friends of said minors, which has been likewise approved, to be executed according to its form and purports.

"We, knight councillor of the King in his councils, commissioner general of the navy, orderer and first magistrate in this province aforesaid, and undersigned, accompanied by the said King's attorney general, clerk and usher of the council, appeared in person at the Bar of the court to proceed definitively to the last outcry, and sale, and adjudication, to the highest and last bidder, of said land and plantation; where having seen the process verbal of said publication and posted up notices in all the usual and customary places in this city of New Orleans made by Le Normand, usher, under date of the 7th of the present month, said sale and adjudication having this day been published by the beat of the drum in all the crossways of the city, and there being a number of bidders, we again caused to be published and proclaimed in a loud and intelligible voice by the usher crier, that we were presently going to proceed definitively, and for the fourth and last outcry, to the sale and adjudication to the highest bidder, of a tract of land and plantation belonging to the succession of the deceased Delfant de Pontalba, situated at about one league above and on the same side as this city, going up the river, adjoining on one side the plantation of the succession of the deceased Delino, and on the other that of Mr. Caminada, the said land having 11½ arpents front, by the depth and point of compass it runs to, which plantation formerly formed an angle of two equal sides, of which the basis fronting on the river had 22 arpents front by eighty in depth; but Mr. Broutin, to whom it belonged, having sold to Mr. Delino, the quantity of ten and one-half arpents front by forty only in depth, and between parallel lines, the overplus of said angle forms, consequently, the superficies of said land and plantation which are now to be sold; on which are constructed a main house, a kitchen, a store, a dry-house, a pigeon house, a chicken house, seven negro cabins, seven tubs for the making of indigo, with the yard, garden and enclosures, with all the crops now actually hanging by the roots, appurtenances and dependencies, without reserve or withhold, and in the condition as the whole now is; the said sale and adjudication under the clauses, conditions and obligations, on the part of the highest bidder, to pay the price of his adjudication in ready money, before being put in possession, with all costs incurred. And as Mr. Livaudais, the son, bound himself by a bargain made under private signature between him and the deceased Pontalba, to make and complete on the said plantation two pigeon houses for the sum of two thousand pounds, on account of which he has already received from said deceased one thousand pounds, it is covenanted and agreed that the highest bidder for the said plantation shall accept the said bargain at his risk; and that in consequence he shall pay, besides the price of his adjudication the sum of 1000 pounds, yet due to the said Mr. Livaudais, and as soon as he has delivered

the said pigeon houses, made and completed according to said bargain, a compared copy of which will be delivered to him, according to which bargain the rubbish and materials of the old pigeon house now actually on said plantation belong to Mr. Livaudais, all which said clauses and conditions were read and explained several times in a loud and intelligible voice by the usher crier, and the last bid of the sum of fifteen thousand pounds, made by Mr. Thomassin was raised by Mr. Broutin to fifteen thousand five hundred pounds; by Mr. Maxent to sixteen thousand pounds; by Mr. Marin to seventeen thousand pounds; by Mr. Songy to seventeen thousand five hundred pounds; by Mr. Marin to eighteen thousand pounds. And after having waited until five o'clock, without any other bidder having presented himself to cover said bid, and in consideration that said plantation is yet far from its just value, by consent of the said King's attorney general, and the said Mr. Fuselier de la Claire, in his quality, we, commissioner general of the navy, orderer aforenamed and undersigned, have decreed and do order that new publications be made and posted up in the usual and customary places in this city, Sunday next, twenty-first of the present month, for a new outcry and bids, the following Monday, the 22d of said month, at 9 o'clock in the morning, on which day all persons will be admitted to cover said bid, after said clauses and conditions.

"At New Orleans, the day, month and year as above, and we have signed.

(Signed) FUSELIER DE LA CLAIRE,
RAGUET,
ROCHEMORE."

"And the said 22d of said month of September, in the year 1760, at 9 o'clock in the morning, by virtue of our decree of the 16th of the present month, and also in execution of the decree of the supreme council of this province, rendered the sixth of the present month, decreeing that, in order to put an end to all unnecessary proceedings, that the demands and oppositions of Mr. De la Ronde, and all other opponents to the sale of the movables and immovables of the succession of the deceased De Pontalba should be rejected, and prohibiting them from making others, and, in consequence, ordering Mr. Fuselier de la Claire in his quality to cause to proceed immediately the said sale, inasmuch as there are already negroes sick, whose sickness might become serious and prejudicial to the minors, to place the funds accruing therefrom to the best advantage, the rents which are drawn therefrom not being sufficient for their sustenance; and besides that, it is the intention of the said deceased mentioned in his will, which has been duly and legally approved and homologated the 14th of July past, in conformity with the recommenda-

tions of a family meeting of the relatives and friends of said minors, which has likewise been approved to be executed according to its form and purport; we, Vincent Gaspard Pierre Rochemore, commissioner general of the navy, orderer and first magistrate in this province, aforenamed and undersigned, accompanied by the said King's attorney general, the clerk and usher of the council, personally appeared at the Bar of the court to proceed definitively and for the last outcry, to the sale and adjudication to the highest and last bidder of said plantation, where, having seen the process verbal of said publications and posted up notices in all usual and customary places in this city of New Orleans made by Le Normand, usher, under date of the 21st of the present month, said sale and adjudication having this day been published by the beat of the drum in all the crossways of this city; and there being a number of bidders, we caused again to be published and proclaimed in a loud and intelligible voice by the usher crier, that we were presently going to proceed definitively, and for the fifth and last outcry, to the sale and adjudication to the highest and last bidder of the land and plantation belonging to the succession of the deceased Delfant de Pontalba, situated at about one league above, and on the same side of this city, going up the river, adjoining on one side the plantation of the succession of the deceased Delino, and on the other that of Mr. Caminada, the said land having 11½ arpents front by the depth and point of compass it runs to; which plantation formed formerly an angle of two equal sides, of which the basis fronting on the river had 22 arpents front by eighty in depth; but Mr. Broutin to whom it belonged having sold to Mr. Delino the quantity of ten and a half arpents front by forty only in depth, and between parallel lines, the overplus of said angle forms consequently the superficies of said land and plantation which are now to be sold, on which are constructed a main house, a kitchen, a store, a dry-house, a pigeon house, a chicken house, seven negro cabins, seven tubs for the manufacture of indigo, with yard, garden and enclosures, with all the crops now actually hanging by the roots, appurtenances and dependencies, without reserve or withhold, and in the condition as the whole now is, the said sale and adjudication under the obligations, clauses and conditions, on the part of the highest bidder to pay the price of his adjudication in ready money, and before being put in possession, with all costs incurred; and as Mr. Livaudais, the son, bound himself by a bargain under private signature, made between him and the deceased De Pontalba, to make and complete on the above described plantation two pigeon houses for the sum of 2000 pounds, on account of which he has already received 1000 pounds, it was covenanted and agreed that the highest bidder for said plantation shall accept said bargain at his risk, and that in consequence he shall pay besides the price of his

adjudication, the said sum of 1000 pounds still due to the said Mr. Livaudais, as soon as he has delivered the said pigeon houses, made and completed according to said bargain, the rubbish and materials of the old pigeon house, now actually on said plantation, to belong to said Mr. Livaudais; all which said clauses and conditions were read and explained by the usher crier in a loud and intelligible voice, upon which the last bid of the sum of 18,000 pounds, made by Mr. Marin, was raised by Mr. Dargenton to 20,000 pounds, by Mr. Jung to 20,500 pounds, by Mr. Villere to 27,000 pounds, by Mr. Jung to 31,000 pounds, by Mr. Dargenton to 32,000 pounds, by Mr. Villere to 33,000 pounds, by Mr. Laforcade to 34,000 pounds, by Mr. Jung to 34,500 pounds, by Mr. Dargenton to 34,700 pounds, by Mr. Villere to 35,000 pounds, by Mr. Laforcade to 35,200 pounds, by Mr. Villere to 35,400 pounds, by Mr. Dargenton to 35,500 pounds, and after having waited until twelve o'clock, without any other bidder having presented himself to cover said bid, by consent of the said King's attorney general, and said Mr Fuselier de la Claire, in his quality, we, commissioner general of the navy, orderer, aforenamed and undersigned, have adjudged, and adjudged definitively, purely and simply, the said land and plantation, with all appurtenances and dependencies, without any reserve or withhold, to the said Mr. Dargenton, as highest and last bidder, for the said sum of thirty-five thousand pounds, which he has promised and binds himself to pay immediately into the hands of the clerk, with all costs incurred, as also to perform all the other conditions inserted in the present process verbal; in consideration of which he remains free and good possessor of the said things above adjudicated to him, so that he and his may do, enjoy and dispose thereof in full property and as to him belonging.

"Granted at the Bar of the court, at New Orleans, the day, month and year aforesaid, and we have signed.

(Signed) FUSELIER DE LA CLAIRE,
DARGENTON,
RAGUET,
ROCHEMORE."

J. F. C. W.

Collinet, Paul: Études historiques sur le droit de Justinien. Tome premier. Le caractere oriental de l'oeuvre legislative de Justinien, et les destinées des institutions classiques en occident. Paris, libraire de la societé du recueil. Sirey, 1913, XXXII, 338.

Two main views of the codification of Justinian have heretofore been current.

The original one was to consider it as an expression of the classical Roman law of the second and third centuries, and this view held sway for centuries; under it the *corpus juris* was held in the highest esteem; and all present systems of law of Roman origin were built up upon the basis thereof.

But after the discovery of the Institutes of Gaius and other remnants of the classical jurisprudence of Rome, and of the innumerable interpolations made by Tribonian and his collaborators, Justinian's work fell into contempt, and by many became looked upon as but a falsified and degenerate edition of classical Roman law.

Some years ago Mitteis, and after him a number of German and French scholars, rose up in revolt against either and both of these views.

When the Digest, Institutes and Codes were published, Justinian held sway over no part of the former West Roman Empire. In theory he considered himself overlord of the Gothic king of Italy, and the latter may have acknowledged the emperor as his Suzerain, but βασιλεῦς had nothing to do with the legislation or judicial affairs of the country; he had no jurisdiction.

His codifications, then, were intended to apply to the lands and peoples of the East Roman Empire only.

But in the Eastern provinces the law of Rome, at least outside of the constitutional law, had never fully penetrated, and as it did penetrate, it was constantly modified by Greek or Hellenistic law and custom. Especially was this the case since the time of Constantine, and this latter development had been taking place for over 200 years, when Justinian set to work on his codification.

The Syrian coutumier and the many Greek papyruses discovered in Egypt show this clearly. In the Hellenistic and Oriental lands and among their peoples the law of Rome had become orientalized, and was orientalized when Justinian appointed his codification commission. And the reason why the law of Rome had become orientalized was that it had been applied to oriental conditions of life and of society.

This, then, was the condition facing Justinian when he decided to codify the law of his empire.

It was impossible for him to re-enact the classical law of Rome; it would not have fitted, and could not have been applied. At the

same time, jurisprudence having degenerated considerably since the year 300, it was of great importance to put it on its legs again, as far as possible, by making it appear that, as it was, it came down from the classical jurists in direct descent; hence the many citations from them (although these often had to be falsified by interpolations in order to make them fit); and these citations were also incorporated, in order that the principles expressed therein might act as rallying points in the constantly increasing chaos of casuistic and separatistic law developing in the various provincial centers of the empire.

Justinian's task was, then, something like Napoleon's. He had to legislate for a Hellenistic and Oriental country, partly Romanized, governed partly by a droit écrit (the constitutions of various emperors), partly by the coutumes of the various provinces. In trying to make the laws of their lands uniform both of them had to cast about them for something of sufficient authority to silence the particularistic voices. Napoleon found it in the codifications of Justinian with their hundreds of years of authority; Justinian found it in the classical law of Rome; the inhabitants of his empire still called themselves Ῥωμαῖοι, and the idea of orbis Romanus was still strong in the minds of all the people.

Napoleon's laws are founded upon Justinian's laws; they are these laws adapted to the conditions of France around the year 1800. They are French law.

Justinian's codifications are founded upon the classical law of Rome, but are not this law; they are Roman law adapted to the conditions of, what afterwards became known as the Levant, around the year 500. They are Byzantine law.

That Justinian's laws met the requirements of the times is evidenced by the fact that they remained the basis of the law of the Lower Empire for the balance of its existence, or for more than 900 years, and by the additional fact that the laws of the majority of civilized mankind to this day rest on the foundation laid by Justinian. As the author points out, the classical law of Rome could never have answered this purpose. But the law of Justinian, permeated as it was by the influences of Hellenism and of Christianity, formed just the foundation upon which the barbarians, after a certain development had been reached, could rear their temples of justice.

The foregoing may answer for a short résumé of the book reviewed. The author goes into very many details in order to show the Byzantine character of Justinian's work, but these would have but small interest for the ordinary reader.

The author was professor of the faculty of law at the University of Lille. At present he is not likely to be there. He has the usual power of clear statement and expression whereby most French authors distinguish themselves from many English and almost all German writers, but he appears at times to be rather verbose; however, his book is very readable, and contains a treasury of information.

Directly, its subject cannot be of very great interest to American readers, but looked at from another standpoint, it ought to be of the greatest interest to us.

Around 530 the situation in the legal world of the Lower Empire was this: The law was founded upon the law of Rome, as it had been some 300 years earlier. But by statutes, decisions, and local customs it had become, not only fundamentally altered, but had become rather anarchistic, as separatistic influences had gained the ascendancy. In other words, it had become extremely uncertain.

Around 1900 the legal situation in the United States is the following: The law is founded upon the common law of England as it was and developed from about 1650 to about 1775. But federal statutes and decisions, as well as statutes, decisions and customs of the many separate states, have altered the common law of England, in many respects fundamentally, and the many legislatures and courts of last resort, each supreme within its territory, have caused our law to become highly uncertain.

Should we, if we tried, be able to produce such a codification as that of Justinian, which not only answered the demands of its own time, but had in it sufficient of vitality to remain the legal foundation of the greater part of the world for near unto 1400 years?

A. T.

GERMANY.

BIBLIOGRAPHY.

1915.

The war has naturally curtailed to a great degree the usual productivity of German lawyers and scholars in the field of legal

literature, and yet not a few important works made their appearance during the year 1915.

A number of leading scholars died during the year. Those whose departure will be most regretted by jurists throughout the world are Heinrich Brunner, probably the most celebrated continental legal historian, and Ludwig von Bar, whose contributions to the conflict of laws are of permanent importance. Other important writers who enjoyed high authority in Germany are Dr. Hugo Neumann, the editor of the *Juristische Wochenschrift*, one of the important leading periodicals, the editor of the *Jahrbuch des Deutschen Rechts*, and of one of the best editions of the German Civil Code; Dr. Georg Eger, an authority on railroad law, land transportation in general, or what we would call interstate commerce, eminent domain, and employer's liability; and Dr. P. Siméon, the well-known writer on the civil law whose principal book, "Recht und Rechtsgang," is a standard work in Germany.

Among the more important publications of the year the conclusion of the new edition of Holtzendorff's "Enzyklopädie" may be noted. Several important compilations of the emergency legislation, brought about by the war, deserve attention. In the field of legal philosophy an important contribution was made by Julius Binder in the form of a critique of Stammler's legal theories.

In the field of the civil law Staudinger's commentary, which, with Plunck, enjoys the highest authority in Germany, was brought to a conclusion A new edition appeared of one of the volumes of the treatise begun by Dernburg, and a new volume has been added to Kohler's treatise on the civil law.

In the field of commercial law a new volume has been added to the extensive encyclopedia edited by Professor Ehrenberg and a short history of commercial law by Rehme appeared during the year. A source book of German maritime law was published by Professor Pohl.

Contributions to the subject of civil procedure are the edition of Jaeckel's commentary on executions, edited by Güthe, and a new work of Kollmann on arbitration courts in industry and commerce.

An important contribution to criminal law was made by Professor Binding in the form of a collection of essays on criminal law and procedure.

Important contributions were made in the field of public law. The fifth edition of Laband's celebrated treatise on German constitutional law was completed by the publication of the fourth volume. A new (fifth) edition of Rönne's treatise on Prussian constitutional law, edited by Professor Zorn, also appeared. A reprint of Otto Gierke's earlier contribution to political theory was issued and Professor Hatschek published a treatise on parliamentary law.

Two contributions to administrative law, a work by Freidrichs, and a new edition of Georg Meyer's standard treatise, should be noted, as well as a number of important works on taxation.

The numerous problems created by the war resulted in an unusually large number of contributions to the field of international law, of which the most important will be named below. A new edition of Liszt's standard text-book, and additions to the Handbuch des Völkerrechts, edited by Stier-Somo, are worthy of note.

The most important publications of the year are listed below:

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E. M. B.

HOLLAND.

LEGISLATION.

1914.

Owing to the conditions of unrest created by the war, very little legislation of general interest has been enacted in Holland during the past year. Such laws as were passed were nearly all emergency measures, dealing with the peculiar conditions, social and financial, due to the war.

A loan of $110,000,000 was authorized and it was provided that if the voluntary subscriptions were less than $60,000,000 the persons or corporations who were assessed in the tax on capital for an amount exceeding $30,000 were obliged to participate in the loan to an amount fixed by the law. For those who owned between $30,000 and $40,000, such amount was 1 per cent of their capital and the percentage increased until it attained 7 per cent for fortunes exceeding $2,000,000. Notice of the amount to be subscribed and of the time of payment is to be given and objections may be filed with the inspector of taxes, whose decision is final. The filing of such objections does not work as a stay, but, if the claim is allowed, the excess paid in is refunded.

Although there exists already a tax on capital, it was deemed necessary to impose in addition an income tax. All residents, natural persons and corporations are subject to it; no distinction is made between domestic corporations and foreign corporations having an office within the kingdom. Non-residents who have an interest in real estate in Holland or who receive a share, except as shareholders, of the income of any business conducted within the kingdom fall under the law; they are taxed only on the amount of income derived from said sources. A somewhat remarkable feature of the law is that it is expressly provided that profit arising from speculation in funds or merchandise, not in the course of a regular business, is not to be considered as part of income.

Incomes below $260 are not subject to the tax; the minimum is approximately one-fifth of 1 per cent, until 1 per cent is reached for incomes of $600. The tax increases gradually, so that the owner of an income of $8000 would have to pay a little over 3 per cent. Incomes over this amount are taxed at 5 per cent on the excess.

Another law, made necessary by the exceptional conditions of trade and industry created by the war, puts all stock and produce exchanges and all auctions of stocks and bonds under the control of the government. It has the right to regulate their opening or closing, the quotations and the mode of doing business generally; and particularly the liquidation of loans or advances, made before the 29th day of July on the security of stocks and bonds. The exchanges closed the end of July and were closed at the time the law was passed. It was thought that the question, what the respective rights of borrowers and lenders should be on their reopening after a longer or shorter interval, was one in which the public generally was interested and which should not be left to the decision of a majority of any private corporations or associations.

The Minister of Finance is authorized to fix the value of all securities which have been given as margin or security for loans prior to July 29, 1914. If a subsequent quotation on the exchange is lower, and the margin is diminished below the amount agreed on, the borrower can make good his margin by instalments within a time to be fixed by the Minister of Finance. If he fails to do so the securities may be sold by the creditor, but only if he agrees to make himself a bid at a price to be fixed by the minister on the day of sale. While in this way the rights of the creditor are restricted, he is given the right, which he did not possess before, to rehypothecate the securities in his possession, except premiums and lottery shares, and the law is made retroactive so as to validate rehypothecations made before it went into effect. Agreements to the contrary, made before the law went into effect, are declared null and void. As to securities pledged after said date such right exists only if it is reserved in the contract.

The statute provides for the appointment of a committee of experts to be named by royal decree, and gives the minister the right to make the regulations necessary to carry the law into effect.

The temporary character of the legislation is recognized by incorporating a clause in the statute that as soon as the present extraordinary circumstances have ceased a law repealing the statute under consideration and regulating the transition to a normal condition will be introduced.

SCANDINAVIA.

LEGISLATION.

1914.

DENMARK.

Occasioned by the exportation of potatoes to the United States, and their laws for prevention of introduction of diseases affecting potatoes, there was passed Law No. 24, February 19, 1914, under which an inspection of potatoes intended for export was established.

The Board of Inspectors, if satisfied, may issue certificates to the effect that the potatoes in question have been examined by them, that they otherwise have informed themselves, and that they now certify that the potatoes have been grown in Denmark, in districts free from malignant and contagious potato diseases, and that the potatoes themselves are sound and free from such diseases.

Law No. 127, June 13, 1914, about help to establish small landed proprietors, takes the place of Law No. 94, April 30, 1909. The new law is more liberal in some respects, more strict in others, than the former. Law No. 84, April 21, 1914, about help to building associations, is likewise a renewal and amendment of a former law, No. 36, March 5, 1909. Law No. 80, April 8, 1914, about mutual insurance associations against non-employment, likewise takes the place of a former law, No. 88, April 9, 1907. It is a rule in almost all "social legislation" of Denmark to have each statute contain a section enjoining the revision of the law within a certain time, the reason being that nearly all of such legislation is more or less experimental, for which reason no former experience can be drawn upon in framing the original statute.

Act No. 36, February 25, 1915, is an amendment to the Poor Law, No. 67, April 9, 1891, sec. 61, in favor of blind persons, to the

effect that certain assistance given persons so afflicted, or to those responsible for their support, shall not have the legal effect of poor relief.

Act No. 3, January 5, 1914, is an amendment to Act No. 82, April 12, 1910, providing for substitute arbitrators in settlement of labor disputes.

Act No. 65, April 1, 1914, about life insurance, is a revision of the prior Act No. 72, March 29, 1904. According to sec. 39, all life insurance and annuities in approved Danish companies are exempt from attachment, attachment-execution and execution; neither may they be counted among the assets of bankrupt estates or of insolvent estates of deceased persons, unless the policy shows on its face that its purpose is not to provide support for those whose support is or was a legal obligation on the part of the insured. A similar exemption does not appear to apply to the policies of foreign companies generally, but the status of the latter depends mostly on the principle of reciprocity. They are treated in Denmark upon the same basis as that established for Danish policies in the respective foreign countries, provided that they never can obtain a better status than that accorded the policies of Danish companies.

Act No. 63, April 1, 1914, deals with the evils arising from baby-farming, mostly those caused by agents undertaking to place children with private families; making it a penal offence to hold oneself out as such agent, unless provided with a license granted by the Ministry of Justice.

Act No. 101, May 2, 1914, revises the rules under which the state exercises a control over all entailed estates.

Acts No. 87 and 88, April 21, 1914, provide a reorganization of the public medical department, and Act No. 126, June 13, 1914, provides rules for the education, appointment, work and supervision of midwives.

In addition, a great many special and temporary laws have been enacted to deal with the situation caused by the great war, all of them emphasizing the strictest neutrality, and a great many having for their special object the conserving of the resources of the country, in money, raw material and especially food products. Several are of a military character, and Denmark, like all neutral

countries in the danger zone, has been forced to spend millions upon millions for preparations to be in a position to defend its neutrality. This particular legislation is of about the same character in all neutral countries, and there appears to be no call for a full enumeration of them. They include, besides various prohibitions of export, including those of war munitions, marine insurance of war risks, moratoriums of more or less restricted character, taking over of the supply of grain, fixing of maximum prices for the necessaries of life, etc., all of them showing what a hardship the gigantic war has imposed upon the small neutral countries surrounded by the great belligerent nations. Among the laws caused by the war is, of course, also one authorizing the government to borrow money to cover the extraordinary expenses caused by the situation.

ICELAND.

The special conditions in Iceland have produced the Act No. 47, November 30, 1914, providing rules for voting by persons who, at the time of the polling, are absent from their legal residences; this applies to both sailors and others, the long distances and primitive means of communication often making it impossible for a voter to reach his home in time.

Act No. 48, November 30, 1914, provides that the mayor of Reykjavik shall be elected by all the voters and not by the council as heretofore. The same act provides that the mayor shall not be ex-officio president of the council, it hereafter electing its own presiding officer.

Even in Iceland the automobile has become common enough to call for Act No. 21, November 2, 1914, regulating their use, practically copied from the corresponding Danish law, but with the difference that the party damaged has no lien upon the motor vehicle causing the damage.

Act No. 30, same date, contains certain rules for the right to challenge both law and lay judges of the Landret, and provides that a decision may be reached by a two-thirds majority of all the judges voting.

The Superior Court of Appeal of Iceland has three judges, and three judges must participate in each decision. The law school of

Reykjavik has three professors. Act No. 31, November 2, 1914, makes these three professors extraordinary assessors of the Superior Court, to be called in order of appointment, to fill the court as often as one or more of the ordinary assessors are prevented or incapacitated.

Act No. 35, same date, provides for a survey and registry of all separate tracts and lots in Reykjavik.

Even Iceland has had to promulgate various war measures.

NORWAY.

Two amendments to the Constitution were passed during 1914, one of February 28, allowing rehearings before the Supreme Court, and the other of March 7, abolishing the former provision under which bankrupts and persons having assigned for the benefit of creditors were deprived of their right to vote until final settlement of the proceedings.

Various Acts of April 24, June 12, June 26, July 3 and July 27, 1914, are in the nature of minor amendments to existing laws about examinations at the university, high schools, physical education, practice in criminal cases, appointment of "Skjönsmaend" in civil cases.

Among other laws may be noted that of July 3, 1914, amending the Act of August 3, 1897, about certain fisheries.

Almost the whole balance of the year's crop of law has been occasioned by the war and deals with secrets of defense, moratoriums of greater or smaller extent, marine insurance against war risks, prohibition of certain exports (grain, flour, potatoes, coal, coke, mineral oils), stricter rules as to telegraphing and telephoning, and applying all such rules to wireless telegraphs and telephones.

SWEDEN.

The year 1914 gave promise of becoming a very important one in the history of constructive legislation. The war prevented several important matters from reaching a final conclusion, but even as it is, several acts of great importance were passed.

Act of April 18, 1914, deals with commission merchants, mercantile agents and commercial travelers. It is founded upon

a uniform report made by a Scandinavian commission and follows the recommendations of the report, except in a minor matter about the lien of the commission merchant on the goods left with him for sale, for his commission, advances and outlays in connection with the transaction.

Two Acts of September 4, 1914, deal with life insurance.

An Act of October 16, 1914, amends the maritime code in two respects, first as to the requirements for seaworthiness, and second, as to the legal protection of the crew. It fixes a normal day of labor of ten hours (nine hours in tropical countries) and provides extra pay for overtime.

An Act of July 24, 1914, has for its purpose to conserve (and especially to conserve for Swedes) the mineral lands of Northern Sweden.

An Act of September 4, 1914, provides for certain steps to be taken in the fight against consumption.

The most important legislation of the year is, without doubt, the National Defense Act of September 17, 1914. Under this act every Swedish man is liable to do military service from his 20th to his 48th year. The first eleven years are passed in the line, the next four in the reserve, and the remaining thirteen in the landstorm. All who are able to carry arms are assigned to the active army or navy, all others to such other service as they may be able to perform. Only those being physically unable to render any kind of military service are exempt. The term of actual training and service is about one year, besides service at maneuvers. Non-commissioned officers for the training of recruits are drafted from among the privates, and then have to undergo a further period of training and serve for a longer term. Men having had a higher education may be drafted for training as officers, but the whole term of their active service, outside of maneuvers, must not exceed 485 days (in the army) or 500 days (in the navy).

In consequence of this act, there was also passed an act of October 23, 1914, containing a penal code for the army and navy, and rules for the organization of courts martial.

In further connection with the New Defense Act was passed an Act of October 9, 1914, imposing a certain tax upon certain persons and corporations, from which to obtain the initial expense

connected with the introduction of the new law. This tax is to be collected until it shall have produced 75 mil. kronas.

A number of temporary laws, called forth by the war, and of a character similar to those in Denmark and Norway, have also been passed. A. T.

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SPAIN.

It is very much regretted that, owing to the fact that for over a year the editor of this section has received no copy of the *Revista de Legislacion* containing the current Spanish laws, it is impossible to make any review of Spanish legislation in this number. It may be explained that the editor has made efforts to secure these laws through the Embassy of Spain in Washington and through private sources, but without success. In a subsequent number of the JOURNAL it is hoped to be able to furnish the omitted material.

J. W.

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This is a publication of the Spanish Institute of Criminology on mental diseases, as affecting the responsibility of violators of the law. Spain, in common with most of the other countries of Europe, is far in advance of the United States in her treatment of those unfortunates who, either through inherited tendencies or as the result of disease or physical injury, are impelled to the commission of serious crimes, and especially of sexual offences. Such individuals invariably are subjected to a thorough examination by medical experts, whose reports are treated by the courts with the greatest consideration. If evidence of insanity is found to exist, the accused person is not brought to trial, but is at once

committed to an asylum. Thus, acts of persecution and injustice, of daily occurrence under our archaic system, and by which persons irresponsible for their conduct are sentenced to long terms of imprisonment, and sometimes to death, are avoided. Some offences, for instance, sodomy, which are felonies under our jurisprudence, are not recognized as crimes by the laws of Spain. This work, which consists of a series of lectures delivered before the Institute of Criminology, is instructive and interesting. (Librería de Fernando Fé, 15 Puerto de Sol. Madrid, 1915. 4to. Price, 5 pesetas.)

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An encyclopedia of jurisprudence principally concerning the validity of various proceedings in matters of litigation. It contains abridgments of more than 4000 decisions of the Supreme Court from 1904 to 1915, and, while concise, is exceedingly comprehensive and useful. (Libreriá de Fernando Fé, 15, Puerta del Sol. Madrid, 1915. 4to. Price, 10 pesetas.)

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The frequent appearance of new editions of the Spanish Penal Code indicates how important and interesting this branch of the law is considered by the jurists of the Peninsula. Of all the codes enacted for the punishment of crime by those nations whose jurisprudence is based on the civil law, none is superior, and few, if any, are equal to that of Spain. In its application, justice is indeed tempered with mercy in the case of the weak and the irresponsible, but the hardened offender is treated with exemplary severity.

The above-mentioned work, which forms Vol. XXIII of the well-known and valuable "Manuales Reus de Derecho," abounds in references and notes which include decisions of the Supreme Court on all important points, all being very exhaustive and satisfactory. The appendices, of which there are four, are especially remarkable for the number and variety of the subjects which they contain. (*Casa Hijos de Reus.* Cañizares. 3 dupdo. Madrid, 1915. 8vo. Price, 10 pesetas.)

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SWITZERLAND.

CONSTITUTIONAL AND LEGISLATIVE ASPECTS IN 1915.

Despite the overmastering pressure of the European War, Switzerland's history during the year has not been without interest to the student of government and international relations. Parliament has held four sessions: April 6 to 15, June 7 to 19, September 20 to October 1, and December 6 to December 23, this latter session, as always, being the most important of the year, and the one in which the Confederation's leading officers are chosen for the succeeding 12 months. In this connection it is well to recall, as was stated in last year's Bulletin, that in apportioning the duties of Switzerland's annual President, he is no longer arbitrarily assigned, as formely, to the so-called "political department" which has special charge of foreign affairs, but if he takes this, as has been done by the new President, M. De Coppet for 1916, it is taken as a permanent charge and not dependent upon the Presidency. During the year the Federal Council has held 128 sessions as against 155 in 1914, and has disposed of a docket containing over 3000 titles of subjects. Naturalization has claimed a large portion of the Council's attention, as has also re-integration, or the re-acquisition of Swiss citizenship by those who have lost it through marriage or naturalization abroad.

Among matters which have not been proceeded with, but which are still regarded as of great importance, may be mentioned the

new proposed amendment to the federal constitution by initiative touching election of the National Council upon a plan of *proportional representation;* similarly, the amendment proposed by initiative under which federal treaties are to be submitted to popular referendum before becoming finally valid; similarly, the final settlement of the question touching utilization of the country's great hydraulic forces as to which a constitutional amendment was adopted in 1908, and has been followed by subsequent legislation, as readers of the Bulletin will remember; the elaboration of a federal penal code, the last step in placing Swiss jurisprudence upon a uniform basis, has progressed, though not rapidly, during the year. The opening on March 29 of the new and greatly shortened railway line across the Jura, known as the Frasne-Vallorbe, was accompanied by the ratification of a treaty with France touching veterinarian service at the new frontier station, which will tend to secure both countries against dangers of disease of animals in course of transport.

The federal constitution has been amended, by reason of the necessities superinduced during the war, by the introduction of an article authorizing a special war tax, which is not, however, to be regarded as renewable, that is to say, the tax is authorized for the exigencies of the present war and not beyond. This amendment was framed in Parliament and submitted to popular vote by the Federal Council on June 6, 1915, 452,117 electors having pronounced in favor of the measure, and 27,461 opposed, all of the 25 cantons or states having voted in favor. The text is as follows:

"With the view of partially providing for expenditures incurred by the mobilization of the Swiss army during the European War, the Confederation may lay a war tax, not renewable."

The result of the election was communicated by the Federal Council, following its usual practice, to the Federal Assembly or Parliament, August 15, and the Council at the same time laid before Parliament a detailed plan of taxation proposed in view of carrying out this unusual measure. On December 22 Parliament passed the measure, assigning the actual levying of the tax to the cantons, which will pay the Confederation four-fifths of all amounts realized, one-fifth being retained for cantonal use. There will be exempted from the tax all federal and cantonal agencies,

including the new National Insurance Accident Bureau at Lucerne; the Swiss National Bank; the communes regarded as business corporations; together with institutions secular and ecclesiastical coming within the domain of public law, and other institutions in so far as their property or income may be devoted to religious services or secular instruction, or to the assistance of the sick or the poor; as well as such transportation agencies as shall have paid no dividend within the period for which the tax is levied. On December 30 the Federal Council, duly empowered by Parliament, promulgated an ordinance for the carrying out of this tax legislation under the Federal Department of Finance, in which a special section devoted to constitutional taxation is to be instituted under the supervision always of the Council itself.

Another measure of importance and reflecting the exceptional conditions due to war is seen in permission given through the Federal Council by Parliament to relax somewhat the praiseworthy precautionary measures of the recent factory legislation in favor of a possibly needed extension of the hours of labor. Under the Factory Law of June 18, 1914, as mentioned in last year's Bulletin, execution of the factory legislation was given to the cantons, to whom now the Federal Council under date of November 16, 1915, has addressed a circular letter intended to suspend the literal execution of portions of this legislation.

REORGANIZATION OF THE FEDERAL ADMINISTRATION.

This is proceeding, though slowly, it being a task of no small difficulty to institute a federal administrative jurisdiction, as authorized by the constitutional amendment of a year ago, as well as a re-arrangement of the departments of the Federal Council, in view of legislation passed in 1914.

In 1915 practical measures touching instruction, clothing and administration of Switzerland's mobilized forces continually occupied the attention of the government, which promulgated a succession of measures necessitated by the maintenance of a war status.

The plans for a new federal court building at Lausanne are still in a preparatory stage, although when finally carried through they will afford the nation's unique judicial tribunal a worthy setting.

NATIONAL ACCIDENT INSURANCE.

On June 18, 1915, Parliament passed a law intended to complete its former measures touching compulsory national insurance in sickness and accident cases, whose central office will be, as has been already noticed, at Lucerne, although it will be operated in connection with local associations, which have hitherto provided insurance in these matters. December 18, 1915, the Council addressed a message to Parliament touching the carrying out of these measures in the military as well as the civil field. This will doubtless be acted upon at an early day, despite the increased burdens which must thus be laid upon the country's financial resources.

CONTROL OF IMMIGRATION.

The government has been obliged to take stringent measures for the control of undesirable immigration, and has issued a circular, September 25, 1915, to the cantonal governments warning them against permitting the promiscuous entry or settlement upon the country's territory of strangers not provided with proper passports or certificates touching their character and aims. The government has published as an annex to the official issues of the proceedings of the Federal Council for the year a detailed tabulation showing the laws and decrees submitted to referendum during the period 1909-1915, which will prove of great value to the student of constitutional and legislative institutions. The voters have sustained three proposed constitutional amendments and have rejected one; no legislative measures have been annulled at the polls.

Concordat.—An inter-cantonal agreement, known as a *concordate,* concluded between Zurich, Schwyz, Glaris and St. Gall, touching fishery rights in the lakes of Zurich, Wallenstadt and the canal of the Linth, was approved by Parliament November 5, 1915, as is required to give it the force of law in the states concerned.

Lastly we notice the federal approval and guarantee of new articles amending the constitution of Uri. This primitive community will hereafter itself conduct a cantonal bank in place of the institution chartered by the canton and which found itself unable to continue its affairs. The federal government will also

advance a small loan to the canton to enable it to begin under the new plan.

The death of Bürckhardt-Schatzmann, of Basel, member of the Basel Legislature and of the Federal Parliament, removes a prominent figure in Swiss public life. Alike in local and national affairs, as is possible under the Swiss polity, Bürckhardt-Schatzmann developed a career of notable usefulness. G. E. S.

3. Asia.

CHINA.

Written for the Comparative Law Bureau by Charles W. Rankin, Esq., Dean of the Law School of Shanghai.

The Comparative Law School of China has now nearly completed the first scholastic term of its existence. It is located at No. 20 Quinsan Road, Shanghai, and is the Law Department of Soochow University, a school of the Methodist Episcopal Church South.

The law school had its origin because of two considerations. The first was a deep appreciation of what the profession of law has meant to the progress of mankind in the past; and the second was the great need of China for lawyers, for leaders, and the fact that now, excluding the schools which returned Japanese trained students have started, there are only two schools in all of China which are attempting to supply the need—only the one at the Chinese University at Tientsin prior to the time that the Comparative Law School of China was opened. It is believed that in all of China there is no such place as Shanghai for a law school. It is centrally located, is easy of access from all parts of China, and, what is most important of all, has good courts, both English and American, as well as the Mixed Court and the consular courts of all nations, with good Bars of American and English attorneys. These facilities give to the students opportunities for observing the actual practice which cannot be found elsewhere. Judge Charles S. Lobingier, of the United States Court, has been most interested and helpful in inaugurating the enterprise, and in giving lectures in a course in civil law—a rare opportunity for all law students. Other members of the American and Chinese Bars of Shanghai who agreed to teach and who have been teaching during this fall are Mr. A. Bassett, Mr. Crawford M. Bishop, Mr.

James B. Davies, Mr. Wm. S. Fleming, Hon. T. R. Jernigan, Mr. Joseph W. Rice, Mr. Earl B. Rose, Dr. C. H. Wang, Mr. T. H. Franking, Dr. Hua-Chuen Mei, Mr. D. A. Adams and Mr. Paul McRae. Although public announcement of the opening of the law school was only made a short time before the opening of the fall term, eight students were enrolled. The course of instruction is wholly in English, and it is the aim to give to the students a comparative knowledge of the leading rules of law of the different Western nations and of China. Accordingly, a degree is given to graduates of colleges of good standing with a thorough course in English, a certificate showing work done being given to others whose English is sufficient for them to carry the course.

With reference to the first consideration above mentioned, viz., a deep appreciation of what the profession of law has meant to the progress of mankind in the past, perhaps lawyers and students of history have a more lively sense of this service than others. But historians and writers on politics state that Rome had a place among the nations of the earth as the maker of a clearly defined legal system for the human race, and that, having framed such a system, although she is no longer a member of the family of nations, yet the sway of her rules of law and of the lawyers that formulated them is so felt in every national system of jurisprudence that even today she may almost be said to rule the world. Certainly this may more accurately be said of her than of any other nation. If John Pym, and Lord Mansfield, the Lord Chancellors, and the many lawyers of England, and Alexander Hamilton, Thomas Jefferson, John Marshall, and other brilliant lights of the American Bar—if all these had been lost to these two great nations, we might well inquire whether the light of liberty would have been as bright within their bounds as it is at this time. America is taken today as a remarkable example of a government of law. It is noteworthy also that writers on political science speak of her as a government of lawyers, the large percentage of Presidents and members of Congress who have been lawyers having been a most striking feature of the administration of her governmental system.

In the second place, if legal training—the leadership of minds profoundly versed in the principles of law—has meant so much to our Western countries, what must be the situation in those

countries where such trained leadership is almost, if not wholly, lacking?

China has a population variously estimated, perhaps of 400,000,000 to 450,000,000 people. In the past centuries of her existence lawyers who practised in the courts were unknown. The judges of the courts have never been, unless in exceptional cases, men of any legal training whatever. The only person who has resembled a lawyer in the judicial system has been that man who studied the laws of China and was sufficiently well acquainted with them to be able to advise and counsel the judge so as that the judicial decision would be in regular form. A quasi-lawyer was also permitted to draft pleadings for litigants. Further than in these two departments of service, the profession has been an unknown quantity. And this particular line of service has wholly diverted the lawyer from leadership. He has never been allowed to appear in court, or before the public, and has been despised by the people. The present situation in China is not hard, therefore, to understand. The mass of people is so large that it is, in its present unorganized form, unwieldy. There has been no one who knew how to organize it. And this is not discounting the intellect of the Chinese. It is simply stating a condition that comes from a total lack of the governmental organizing profession. A man cannot build a ship who is not a trained shipwright. It matters little how bright his intellect may be, if he undertakes to build a ship without having first acquired that line of knowledge and training which comes from years of study of the art of constructing great seagoing vessels, the results of his labors will necessarily only be a junk.

The whole fiber of the ship of state is law. It is made of nothing else. The sea upon which it moves is bounded by law. The shoals and dangerous places in its roadway are pointed out by the danger signals of the law.

In very recent years a few lawyers have been educated abroad. And among these few are some of the most brainy men in China. But a few lawyers are not sufficient. Many are required. There should be lawyers to assist in writing the constitution as delegates of the people. These and other lawyers should then take the constitution back to the people, explain it to them, and get their approval of the work done. It may be the people will want to

add to this, as they added the Bill of Rights to the United States Constitution. The constitution being a valueless piece of paper without a fearless and learned judiciary to construe and guard it, lawyers in large numbers are required for this essential arm of the government. If the effort was made to organize a system of modern courts in China today, it could not be done. The necessary lawyers are not available to make the judges even, to say nothing of the very much larger number necessary to constitute the Bar and assist the judiciary in the handling of litigation. Then there should be lawyers to take their places in the legislative body to assist in making the laws. What man can know so well the laws that ought to be enacted as he who already knows the existing laws, is acquainted with the theory and purpose of law, and will not therefore be disposed to enact statutes in a haphazard and unskillful manner? In addition to this, of the 27 Presidents that the United States has had from the beginning down to the present time, 21 have been lawyers.

The potentialities of the Chinese intellect are inferior to none. It is not necessary to discuss the causes as to why China is today the most backward of great nations. It is sufficient here to say that it is not because her people lack intelligence. The people of China possess all the prerequisites of possible greatness; they have good minds, patience and diligence. Today they want modern education. But such educational facilities as will meet this desire —schools, newspapers, the public speaker on the hustings and the thousand other things that contribute to development of the mind—all come only with good government; and good government only comes with a constitutional government of law, carried on by the people themselves. And when I say "carried on by the people themselves," I mean by the Chinese people.

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Notes on the Legal Bibliography of Latin-America from the Time of its Independence.

COMPILED BY PHANOR JAMES EDER.

CHILE.

Pending the publication of Dr. Borchardt's Guide to the Law and Legal Literature of South America, it is hoped that the following notes (taken chiefly from the *Revista de Bibliografía Chilena y Extranjera,* published by the National Library of Chile) will be of value.

I. Session Laws.

1. Chilean laws were first published in the *Gaceta de Santiago de Chile,* afterwards the *Gaceta Ministerial de Chile,* in 1817.
2. From 1830 the official periodical El Araucano published national laws and continued such publication until 1877, when it was replaced by the Diario Oficial.
3. Since March, 1877, the laws, decrees and other official documents have been published in the official periodical, the Diario Oficial, which replaced El Araucano.
4. In February, 1823, there was enacted a law authorizing the publication of the Boletin de las Leyes y Decretos del Gobierno de Chile (bulletin of the laws and decrees of the government of Chile) which is still published annu-

ally, advance sheets monthly. The early years of this bulletin were reprinted in Santiago and Valparaiso (years 1823-1842, 10 volumes, Santiago; years 1839-1842, years 1823-1866, 14 volumes, Valparaiso). The bulletin for 1914 was numbered LXXXIII.

5. Indice General del Boletin de las Leyes que Comprende Todas las Disposiciones Supremas Dictadas en la República de Chile y Publicadas en Esa Obra Desde 1810 Hasta 1881. (General index of the Bulletin of Laws which contains all the supreme dispositions promulgated in the Republic of Chile and published in this bulletin from 1810 to 1881), by Manuel E. Ballesteros, Lima, 1882.
6. Indice General del Boletin de las Leyes y Decretos del Gobierno de Chile. (General index of the Bulletin of Laws and Decrees, which contains all the laws and supreme dispositions promulgated in the Republic of Chile and published in this Buletin from 1810 to the present day. It is based on the index published by Manuel E. Ballesteros), by Santiago Lazo and Narciso Márquez. 3 volumes. Santiago, 1905-1907.
7. Indice General del Boletin de las Leyes y Decretos del Gobierno. (General Index of the Bulletin of Laws and Decrees of the Government, which contains all the laws and decrees promulgated in Chile and published in this Bulletin from January 1, 1881, to December, 1890. By a lawyer. Santiago, 1892.
8. Since 1906 there has been published a Recopilación de Leyes in serial order, compiled by the Secretary's Office of the Council of State. It includes laws passed from 1893 inclusive.
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11. Decretos Expedidos Durante la Ocupación del Perú. (Decrees issued during the occupation of Peru by the Cuartel General Chileno.) Lima, 1883.
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13. Indice del Boletin de Leyes. (Index to the Bulletin of Laws.) By Alberdi. Valparaiso, 1848.
14. Indice de Disposiciones Judiciales. (Index of Judicial Provisions.) By Mendez. Santiago, 1855.
15. Indice del Boletin de Leyes. (Index to the Bulletin of Laws.) By Mujica. Santiago, 1892.

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16. Gaceta de los Tribunales. (Gazette of the courts.) Published at Santiago since 1841; at first weekly, later daily; to 1912, 110 volumes had been published.
17. Indice General de la Gaceta de los Tribunales. (General index to the foregoing.) By Juan de Dios Plaza; contains a summary of the interesting decisions published in that periodical from its foundation, November 6, 1841, to March 1, 1910; 4 volumes. Santiago de Chile, 1890-1910. Other indices had been published previously.
18. Indice Alfabetico de Cuestiones Resueltas por Nuestros Tribunales. (Alphabetical index of questions resolved by our courts); decisions on the Civil Code from January 1, 1857, when it was first put in force, to December, 1864, and on the Commercial Code. By Severo Vidal. (3 volumes.) Valparaiso, 1865-1871.
19. Jurisprudencia Civil (1879-1894) (Civil Jurisprudence). By Eulogio Piñera. Digest of the decisions where the Civil Code has been applied from January 1, 1857, when it was put in force, to 1892, inclusive. Santiago, 2 volumes.
20. Diccionario de Jurisprudencia de las Cortes de Justicia de la República de Chile. (Dictionary of jurisprudence of the courts of the republic of Chile.) By José Ramón Revest. Santiago de Chile, 1892-1893.
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24. Repertorio de Jurisprudencia. (Digest of court decisions.) By Valentin Gormaz. Santiago, 1873.
25. Apuntaciones de Jurisprudencia. (Notes on jurisprudence.) By Lagos. Chillán, 1892.
26. Jurisprudencia de la Corte. (Jurisprudence of the courts.) By Feliú, G. Talca, 1898.
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28. Jurisprudencia del Juez Señor Lagos. (Decisions by Mr. Justice Lagos.) By Toro Melo. Santiago, 1911.
29. La Jurisprudencia Práctica de Nuestros Tribunales. (Practical jurisprudence of our courts.) By Robustiano Vera. Santiago, 1888.

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31. Codigo de Comercio de la República de Chile. (Commercial code.) Santiago. Appendices: Regulations for the Commercial Registry, Commercial Brokers, Auction Rooms, Law of Imprisonment for Debts, Transfer of Stock, Law of Commissaries. Official edition. Santiago, 1889. Numerous other editions, among which may be mentioned the first edition (Santiago, 1866). Santiago, 1866; Santiago, 1874 (Montt); Santiago, 1874 (Mujica).
32. El Codigo de Comercio y la Jurisprudencia Comercial. (The Commercial Code and court decisions on commercial matters.) By Federico Pinto Izarra y Emiliano Bordalí. Valparaiso, 1890. Includes commercial law decisions from 1867 to 1890.
33. Codigo Penal de la República de Chile. (Penal Code.) Santiago. Official edition, 1889. Appendices: Law on the Abuse of the Freedom of the Press, Appreciation of Proof, Law of Individual Guarantees. Numerous editions. First edition. Santiago, 1874.
34. Codigo Penal de la República de Chile. (Penal Code.) Explained and annotated by Pedro Javier Fernandez. Santiago. Second edition (1899-1900). Appendix of supplementary laws.
35. Codigo Penal. (Penal Code.) Santiago, 1906.
36. Codigo de Mineria de la República de Chile. (Mining Code of the republic of Chile.) Santiago. Official edition, 1889. First official edition was published at Santiago, 1888.
37. Codigo de Procedimiento Civil de la República de Chile. (Code of Civil Procedure.) Official edition. Santiago, 1902.
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45. Prontuario Alfabetico de los Códigos Chilenos Comercio. (Alphabetical compendium of the Civil and Commercial Codes.) Santiago, 1867. By Gormaz.
46. Constitución, Leyes y Códigos de Chile. (Constitution, laws and codes of Chile.) By Garcia Moreno. Madrid, 1895.
47. Colección de Codigos de la República de Chile. (Collection of codes of the Republic of Chile.) By Roberto Miranda, 1891.
48. Recopilación de Leyes y Decretos Supremos Concernientes al Ejercito. (Collection of laws and supreme decrees concerning the army.) Seven volumes. By José Antonio Veras. Santiago, 1870-1888.
49. Ley de Organización y Atribuciones de los Tribunales. (Law of organization and powers of the courts.) Edition of Santiago, 1875. There are numerous later editions, with the amendments.
50. El Boletin de Leyes Reducido a las Disposiciones Vigentes y de Interés General. (Provisions from the Boletin de Leyes, *supra,* in force and of general interest; also contains some laws and decrees which are not comprised in the Bulletin.) To December 31, 1859. By Ignacio Zenteno. Santiago, 1861.

51. Boletin de las Principales Leyes y Decretos Vigentes Dictados Desde Enero 1° de 1860 Hasta Enero 1° de 1871 y Recopilados por Orden de Materias. (Bulletin of principal laws and decrees in force and issued since January 1, 1860, up to January 1, 1871, and arranged according to subject matter.) By J. Ignacio and J. Joaquin Larrain Zañartu. Valparaiso, 1871.
52. La Legislación Chilena no Codificada o Sea Colección de Leyes y Decretos Vigentes y de Interés General. (The uncodified Chilean legislation, or collection of laws and decree in force and of general interest. By José Bernado Lira. Santiago, 1879-1884.
53. Recopilación de Leyes, Decretos y Demás Disposiciones Vigentes Sobre Administración e Inverisón de Fondos Fiscales. (Collection of laws, decrees and other dispositions in force on the administration and inversion of fiscal funds.) By Emilio Morales. Santiago, 1900.
54. Legislación de Aduanas. Disposiciones Vigentes. (Customs legislation—provisions in force.) By Wenceslao Orellana Vilches. Santiago.
55. Legislación Politica, Administrativa y Judicial o Sea Colección Completa de las Leyes y Decretos Dictados en Chile y Vigentes en 30 de Junio de 1898. (Political, administrative and judicial legislation, or complete collection of the laws and decrees dictated in Chile and in force June 30, 1898.) By Augustín Boza Lillo and Ricardo Anguita. Second edition. Santiago, 1898.
56. Prontuario de Legislación Escolar. Recopilación de Leyes Decretos Circulares y Resoluciones Sobre Instrucción Primaria. (Compendium of legislation on schools (collection of laws, decrees, circulars and resolutions on primary instruction.) By Manuel Antonio Ponce. Santiago, 1890.
57. Instrucción Pública—Compilación de Leyes y Decretos. (Public instruction—collection of laws and decrees.) By Ballesteros. Santiago, 1872.
58. Recopilación de Leyes y Decretos Sobre Colonización. (Collection of laws and supreme decrees on colonization, 1810-1896.) By Julio Zenteno Barros. Second edition, 1896. Two volumes.

59. Closario de Colonización y Exposición de las Leyes. Decretos y Demás Antecedentes Relativos al Despacho de Colonización Hasta el 1° de Julio de 1904, Seguido de un Apendice Hasta el 1° de Abril de 1905. (Glossary of colonization and exposition of the laws, decrees and other precedents relative to the Colonization Office to July 1, 1904, followed by an Appendix to April 1, 1905.) Fourth edition. By Ramón Briones Luco. Official edition. Santiago, 1905.
60. Manual del Marino—Recopilación de Leyes. (Mariner's manual—collection of laws.) Four volumes. Santiago, 1886-1889.
61. Principales Leyes y Decretos (Romero y Giron's Instituciones Politicas y Juridicas). (Principal laws and decrees from Romero and Giron's "Political and Juridical Institutions." Madrid (Spain), 1885-1910.
62. Leyes, Decretos y Demás Disposiciones Vigentes Sobre Ferrocarriles en Estudio y Construcción. (Laws, decrees and other provisions in force as to railways under study and construction.) By L. A. Astorquiza. Santiago, 1903.
63. Recopilación de las Leyes Chilenas que se Relacionan con la Medicina Legal. (Compendium of Chilean laws relating to medical jurisprudence.) By Puga Borne. Santiago, 1884.
64. Disposiciones Vigentes en Chile Sobre Policia Sanitaria y Beneficencia Pública. (Dispositions in force in Chile on sanitary police and public charity.) Santiago, 1889.

IV. Law Dictionaries.

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86. Explicaciones de Derecho Civil Chileno y Comparado. (Exposition of Chilean and comparative civil law.) By Claro Solar. Two volumes. Santiago, 1898, 1904.
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166. Prontuario del Juicio de Quiebra. (Practice in bankruptcy suits.) By Luis Barceló. Santiago, 1904.

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184. Apuntes Para Explicar las Prescripciones de los Artículos 11 y 16, Titulo 8° de la Ordenanza de Mejico. (Notes to explain the prescriptions of Articles 11 and 16, Title 8, of the Ordinance of Mexico.) Santiago, 1869.

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Parte 1ª. Leyes Politicas y Organicas, viz.: Constitución Politica de 14 de Octubre de 1894 (Vigente 1° de Enero de 1895); Ley de Amparo, Vigente Desde 1875; Ley de Imprenta de 14 de Noviembre, 1895; Ley Electoral de 27 de Diciembre, 1894 (Reformada 6 de Abril de 1897); Ley Municipal y Departamental, Sancionada 9 de Julio de 1895 (Reformas 22 de Agosto, 1895); Ley de Extranjería de 15 de Abril de 1895; Ley Organica Judicial, 10 de Abril de 1897, Ley del

Tribunal de Cuentas, sancionada 23 de Agosto de 1895; Reglamento Interior del Congreso Nacional.

Parte 2ª. Codigos. Concordados y Comparados con Algunas de las Demas Repúblicas de Centro America. Codigo Civil, sancionado en 31 de Diciembre de 1898 para regir 15 de Septiembre de 1899. Codigo de Comercio, sancionado en 15 de Septiembre de 1898 para regir 1° de Febrero de 1889 (en esa fecha quedaron derogadas todas las disposiciones anteriores). Codigo de Mineria, sancionado 5 de Septiembre de 1898 para regir 1° de Enero de 1899. Codigo Penal, sancionado 29 de Julio, 1898, para regir 1° de Enero, 1899; Quedo derogado el de 27 de Agosto, 1880. Codigo de Procedimientos, sancionado 31 de Enero 1899 y Vigente Desde 15 de Septiembre 1899; derogados el Código de Procedimiento de 27 de Agosto de 1880 y la Ley del Jurado de 30 de Noviembre de 1894.

Parte 3ª. Leyes Especiales. Agricultura de 1895, reformada 9 de Abril, 1897. Instrucción Primaria y Normal, 1895.

37. Complemento de Las Instuticiones Politicas y Juridicas, por Romero y Giron, y Alejandro Garcia Moreno.

Apendice 3. Nuevas Leyes y Codigos de los Estados Americanos.

38. Leyes Constitutivas de Honduras. Tegucigalpa, 1894.
39. Ley de Municipalidades. Tegucigalpa, 1895.
40. Ley Organica de Tribunales. Tegucigalpa, 1899.
41. Codigo Civil. Tegucigalpa, 1898.
42. Codigo de Procedimientos Civiles y Criminales. Tegucigalpa, 1899.
43. Codigo Penal. Tegucigalpa, 1898.
44. Codigo de Minería. Tegucigalpa, 1898.
45. Codigo de Comercio. Tegucigalpa, 1898.
46. All codes, except the commercial, and a majority of the laws were reformed in 1906 by the Codifying Commission. Their report is entitled "informe de la Comisión General de Legislación, 1906." Tegucigalpa.
47. Ley de Organización y Atribuciones de los Tribunales. Tegucigalpa, 1906.

48. Codigo de Procedimientos. Tegucigalpa, 1906.
49. Codigo Civil. Tegucigalpa, 1906.
50. Codigo Penal. Tegucigalpa, 1906.
51. Codigo Penal Militar. Tegucigalpa, 1906.
52. Codigo de Instrucción Pública. Tegucigalpa, 1906.
53. Ordenanza Militar. Tegucigalpa, 1906.
54. Leyes de Amparo, de Elecciones, de Imprenta, de Estado de Sitio, del Notariado, Municipal, de Policia, del Cuerpo Diplomatico, de Extranjería y de Immigración. Tegucigalpa, 1906. Other laws that have not been published in book or pamphlet form are to be found in the official periodical and in the Boletín Legislativo.
55. Ley de Enjuiciamiento Criminal—Decretada por la Asamblea Nacional Constituyente (1904). Tegucigalpa.
56. Leyes Militares, 1881-1904. Tegucigalpa, 1904.
57. Ley Agraria del Estado de Honduras Decretada por el Congreso Nacional Legislativo, 1898. Tegucigalpa, 1898.

III. Court Reports.

58. The decisions of the Supreme Court of Justice were first published in the Gaceta de los Tribunales in 1882, a periodical of which only a few numbers were issued. Prior to that year no publication of judicial decisions was made. They have since seen published in:
59. La Gaceta, official organ of the government (1889).
60. La Revista Judicial (1889 to 1891).
61. Gaceta Judicial, organ of the Supreme Court (1895 to 1902).
62. Revista Judicial (1905 to 1906); and in the
63. Gaceta Judicial (1907 to date).
64. No dictionary or encyclopedia of law has yet been published. Dictionaries, encyclopedias and reports of Spain are consulted, as the Spanish law constitutes the principal source of the Honduras law. Occasionally French, and more rarely English, authorities are consulted. The only index to legislation that has been published is the
65. Güia Alfabetica del Codigo Civil de 1898, by Don Presentación Quesada, 1904. And of the decisions of the courts the

66. Repertorio Alfabetico, by Alberto Membreño, 1892. (Both published by the Government Printing Office.)

67. No work on the philosophy or history of the law has been published.

68. On Civil Law. Dr. Rafael Alvarado Manzano, published ten lessons in the *Revista de la Universidad,* which explained the preliminary title and the first five titles of the Code of 1906 (to marriage): Nos. 1, 2, 3, 4, 5, 6, 7, 8 and 9 of said Review, Vol. I, and

69. Don Presentación Quesada published his Commentaries on Usufruct in Nos. 1, 3, 4, 5, 6, 8, 10 and 11 of Vol. I and No. 4 of Vol. II of the same Review.

70. On Civil Procedure, Don Alberto Membreño published a book entitled "Elementos de Práctica Forense en Materia Civil" (1894), which expounds the Code of Procedure of 1880. It was published by Tipografía Nacional. Prior thereto there had been published:

71. Cartilla Forense, by Don Pedro Pablo Chavez. Second edition of 1853 whereof was reproduced in the *Revista de la Universidad,* Nos. 10, 11 and 12, Vol. II, and Nos. 1 to 3, Vol. III.

72. La Cartilla Forense, by Don Vicente Ariza Padilla (Tegucigalpa, 1878), which will soon be reprinted in the same Review.

73. La Cartilla Forense, by Don Julian Cruz, of Camayagua, printed in Guatemala in 1895.

74. On Criminal Law, Dr. Carlos Alberto Uclés has written notes entitled "Apuntes Sobre la Legislación Penal de Honduras Para la Legislación Penal Comparada." It refers to the law in force in 1896. It was reprinted in No. 2 of the *Revista de la Universidad,* Vol. I.

75. Prior thereto Don Angel Ugarte had published, in 1881, a monograph on "La Aplicación de las Penas." See "Honduras Literaria," Vol. I, page 759. Tegucigalpa, 1896.

76. No special studies on the law of criminal procedure or Commercial law, the law of mortgages, notaries or mining have been published.

77. The law governing patents and trade-marks is that of March 7, 1902. It was printed in the official periodical "La Gaceta."
78. No special works on the subjects or on intellectual and industrial property in general have been published.

TREATIES.

79. Pacto de Unión Provisional Celebrado en San Salvador el 15 de Octubre de 1889. Tegucigalpa, 1889.
80. Tratados de Honduras con Nicaragua, Guatemala y el Salvador. Tegucigalpa, 1895.
81. Adhesión de Honduras a la Convención Postal Universal de 4 de Julio de 1891. Tegucigalpa, 1896.
82. Tratado de Unión Centro-Americana de 1897. Tegucigalpa, 1897.
83. Convención de Paquetes Postales Entre Honduras y los Estados Unidos de America. Tegucigalpa, 1896.

PERIODICALS.

84. La Gaceta de los Tribunales.
85. La Gaceta. (Periodico Oficial del Gobierno, 1889. (In 1904 was being issued three times a week.)
86. Boletin de Noticias.
87. Diario Oficial.
88. Boletín Legislativo. Organo del Congreso Nacional.
89. Revista Judicial.
90. Gaceta Judicial. Organ of the Supreme Court.
91. Four numbers of "El Foro Hondureño" (February 1 to March 15, 1912), were published by Manuel M. Calderon. Tegucigalpa.
92. The commission to draft administrative laws has presented the following bills: 1. Ley de Extradición. 2. Ley Organica de las Secretarías de Estado. 3. Ley de Expropiación Forzosa (emitida). 4. Ley de Reformas al Codigo de Minería. 5. Ley de Policia Minera. 6. Ley de Arancel de Ingenieros de Minas. 7. Ley de Indemnización de los Deños y Perjuicios Causados a la Agricultura por la Industria Minera. 8. Ley de Enturbia-

miento de las Aguas Públicas por la Industria Minera. 9. Ley de Demarcación de Zonas y Pertenencias Mineras. 10. Ley de Accidentes del Trabajo. 11. Reglamento de Esta Ley. 12. Ley del Trabajo de Mujeres y Niños. 13. Ley Reglamentaria de la Anterior. 14. Ley Sobre Creación de Escuelas en las Minas y Fabricas Industriales. 15. Ley de Aguas. 16. Arancel de Abogados y Procuradores. 17. Ley Sobre el Ejercicio de la Jurisdicción Administrativa. 18. Ley de Trabajadores. 19. Reglamento del Cuerpo de Policia de la Capital. 20. Código de Procedimientos Administrativos. 21. Ley Agraria. 22. Reglamento de los Trabajos Topográficos. 23. Arancel de Ingenieros Topógrafos. 24. Reglamento de la Policia Montada. 25. Arancel de Médicos y Cirujanos. 26. Reglamento de la Ley Sobre el Ejercicio de la Jurisdicción Contenciosa Administrativa. 27. Ley de Montes. 28. Ley Informativa de la de Farmacia. 29. Ley General de Obras Públicas. 30. Reglamento de Asa Ley. 31. Ley de Contratas Administrativas. 32. Reglamento Sobre las Condiciones que Han de Tener los Pabellones Destinados a Cinematógrafos. 33. Reglamento Para la Construcción de Edificios Destinados a Espectáculos Públicos. 34. Ley de Policia de Espectáculos Públicos. 35. Ley que Prescribe el Pliego de Condiciones Para la Contratación de Obras Públicas. 36. Reglamento de las Casas de Préstamos y Establecimientos Similares. 37. Código Penal. 38. Ley Sobre el Ejercicio de la Jurisdicción Contenciosa Administrativa. 39. Ley en que se Reforma la de Caminos.

WORKS IN ENGLISH.

93. "Honduras," by Alfred K. Moe (U. S. Consul at Tegucigalpa). Edited and compiled for the International Bureau of American Republics, Washington, 1904. Contains translations of:

Congressional Decree No. 50 of February 22, 1902 (public lands). Agricultural Law of August 21, 1895. Agrarian Law of August 1, 1898. Mining Code of January 1, 1899. Congressional Decree No. 26, May 29, 1903.

Decree No. 70 of February 28, 1902, was repealed and all former laws in force under the Mining Code were revived. This decree became effective July 1, 1903. Colonization Law of 1886, February 26; Law of Foreigners, April 10, 1895; Patent Law, March 14, 1898; Trade-Marks Law, March 7, 1902. Also brief extracts of civil and commercial laws.

94. Translation of the Alien Law of the Republic of Honduras, February 8, 1906 (London, 1907, Great Britain foreign office, miscellaneous).

IV.

ORGANIZATION AND WORK OF THE BUREAU OF COMPARATIVE LAW.

The place of the annual bulletin heretofore published by the Bureau of Comparative Law has been taken by this JOURNAL.

The objects of the Bureau will continue as heretofore. They include the translation into English of foreign laws, the preparation of bibliographies in its special field, and the consideration of foreign legislation and jurisprudence with a view to present information and materials of value to lawyers, law teachers and law students.

All members of the American Bar Association and of the Bureau of Comparative Law will receive the AMERICAN BAR ASSOCIATION JOURNAL every quarter.

All members of the Association are by that fact also members of the Bureau. Any State Bar Association can become a member on payment of $15 annually, and will then be entitled to send three delegates to the annual meeting of the Bureau and to receive five copies of the AMERICAN BAR ASSOCIATION JOURNAL: on payment of $10 more for each one hundred of its members, they will all receive the JOURNAL. Any county, city, district, or colonial Bar association, law school, law library, institution of learning or department thereof, or other organized body of a kind not above described, may become a member on payment of $6 annually, and will then be entitled to send two delegates to the annual meeting of the Bureau and to receive two copies of the JOURNAL. Any person eligible to the American Bar Association, but not a member of it, can become a member of the Bureau on payment of $3 annually, and will then receive the JOURNAL.

Distinguished foreign jurists, legislators, or scholars may be elected honorary members. They pay no fees.

The authorship of the contributions of the Bureau to the JOURNAL is indicated in each case by the initials of the writer.

The next meeting of the Bureau will be held at Chicago, Ill., at 2 P. M., Wednesday, August 30, 1916.

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Legal Bibliography, Boston, Mass.
Ohio Law Bulletin, Norwalk, Ohio.
Patent and Trade Mark Review, New York.
The Law Students' Helper, Detroit, Mich.
Yale Law Journal, New Haven, Conn.

Foreign.

Institut de Droit Comparé, Brussels, Belgium.
Instituto Guiridico della R. Università, Torino, Italy.
Instituto Ibero-Americano de Dereceo Positivo Comparado, Madrid, Spain.
The Journal of the Ministry of Justice, monthly, Petrograd, Russia.
Jurisdische Blätter, Vienna, Austria.
Pravo (law), weekly, Petrograd, Russia.
Revista de Legislación y Jurisprudencia, San Juan, P. R.
Revista de Legislación Universal y Jurisprudencia Española, Madrid, Spain.
Revista General de Legislación y Jurisprudencia, Madrid, Spain.
Societé de Législation Comparée, Paris, France.
Society of Comparative Legislation, London, England.
Vereinigung für vergleichende Rechtswissenschaft und Volkswirtschaftslehre, etc., Berlin, Germany.

Ministerio de Relaciones Exteriores, Buenos Aires, Argentina.
Oficina de Canjes, Ministerio de Relaciones Exteriores, Montevideo, Uruguay.
Ministerio de Relaciones Exteriores, Santo Domingo.
Ministerio de Relaciones Exteriores, Panama.
Biblioteca Nacional, Santiago de Chile.

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Kansas State Library.
Vermont State Library.
New Hampshire State Library.
Massachusetts State Library.
Iowa State Library.
The Library Company of the Baltimore Bar.

TRANSLATIONS OF FOREIGN LAWS, NOW ACCESSIBLE.

Belgian Law, by Todd.
A Short Treatise on Belgian Law and Legal Procedure, by De Leval.
French Civil Code, by Cachard.
French Civil Code, by Wright.
Japanese Civil Code, by Gubbins.
Japanese Civil Code, by Lonholm.
Japanese Civil Code, annotated by De Becker.
Japanese Commercial Code, by Yang Yin Hang.
Japanese Code of Commerce, by Lonholm.
Japanese Penal Code, by Lonholm.
German Civil Code, by Chung Hui Wang.
German Civil Code, by Loewy, under the direction and annotated by a joint committee of the Pennsylvania Bar Association and the University of Pennsylvania.
Roman-Dutch Law, by Wessels.
Penal Code of Siam, by Tokichi Masao (18 Yale Law Journal, 85).
Visigothic Code, by Scott, of this Editorial Staff.
The Civil Law in Spain and Spanish America, by Walton, of this Editorial Staff.
Swiss Civil Code, by Shick and Wetherill, of this Editorial Staff.
Swiss Banking Law, by Landmann.
Korkunov's General Theory of Law (Russian), by Hastings, of this Editorial Staff.
French Law of Wills, Probate, Administration and Death Duties, by Pellerin.
French Law of Bankruptcy and Winding-up of Limited Companies, by Pellerin.
French Law of Evidence, by Bodington.
French Mercantile Law and Procedure, by Argles.
Copyright Laws of the World, by Singer.
Principles of Buddhist Law, by Chan-Toon.
Leading Cases on Hindu Law, by Aiyar.
A Comparative Study of the Law of Corporations, by Kuhn, of this Editorial Staff (Longmans, Green & Co.).
Meili's International Civil and Commercial Law, translated and annotated by Kuhn, of this Editorial Staff.
Banking Laws of Various Countries, by National Monetary Commission.

History of Banking in Canada, by Breckenridge.

A Banking System of Mexico, by Conant.

Digest of the Mercantile Laws of Canada and Newfoundland, by Anger.

Corporations in Mexico, Johnson & Galston, Editors; synopsis of laws relating to the formation of corporations; registration of foreign corporations; conveyance of real estate; creation of bond issues, etc.

Laws of Mexico, by Wheless, of this Editorial Staff.

Handbook of Mexican Law, by Kerr, of this Editorial Staff.

Mining Law of Mexico, by Kerr, of this Editorial Staff.

Mexican Corporation Laws, by Fuller.

Mining Laws of Columbia, by Eder, of this Editorial Staff.

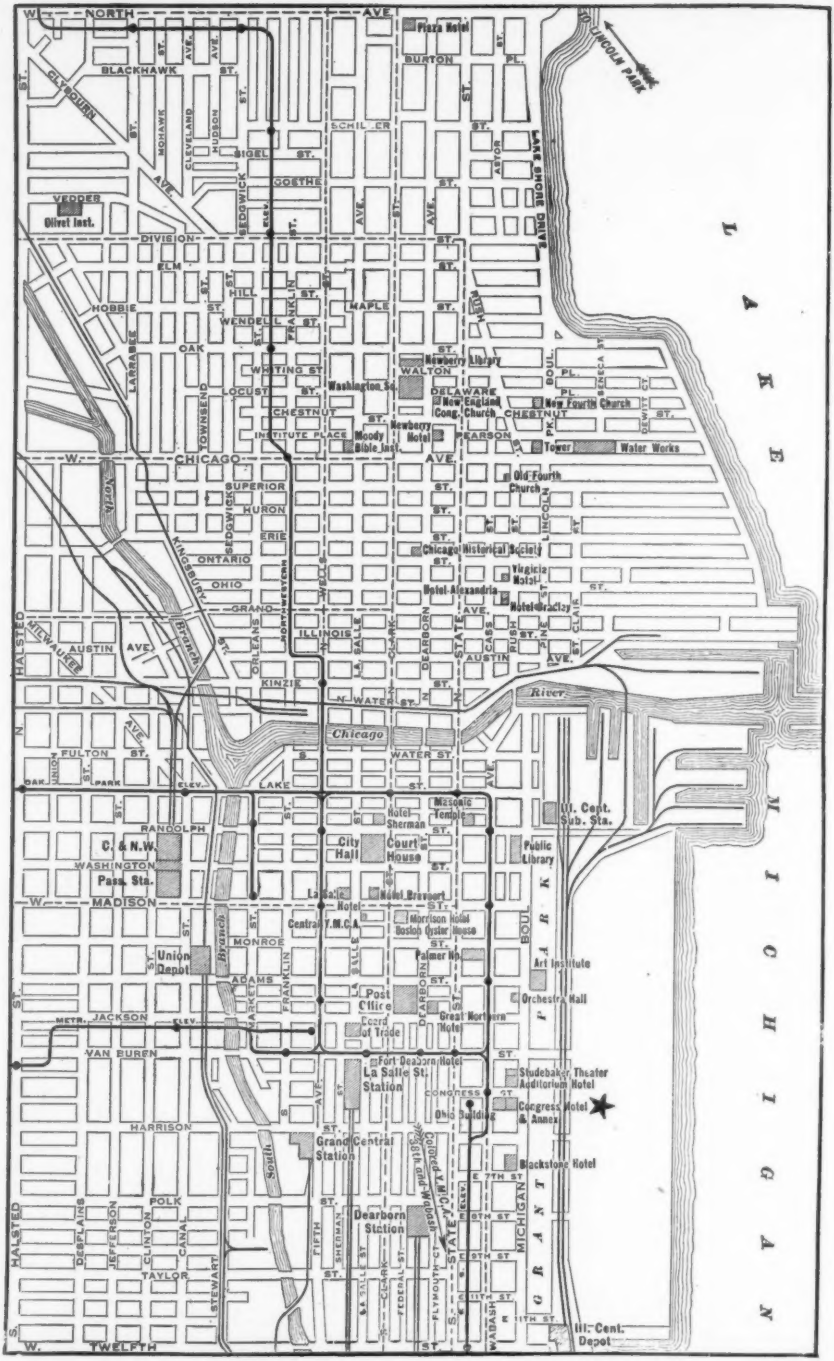
Civil Code of Argentina, by Joannini; soon to be published by this Bureau.

Civil Code of Peru, by Joannini; soon to be published by this Bureau.

The Seven Parts (Las Siete Partidas), by Scott, of this Editorial Staff; soon to be published by this Bureau.

Commercial Laws of the World, Am. Ed., Boston Book Co.

German Prize Code, as in force July 1, 1915; translated by C. H. Huberich and Richard King (Baker, Voorhis & Co., N. Y.).



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Room for two persons, detached bath	3.00 to 5.00
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